

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004

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NEWS

SACBEE NEWS

Wary schools move to screen volunteers

By Janine DeFao

Bee Staff Writer

Published October 14, 1997

Despite a new state law that prohibits schools from hiring violent felons, school districts around the Sacramento region now are grappling with how to screen another group of adults who may work closely with students -- school volunteers.

Volunteers were not covered by legislation signed into law Sept. 30 by Gov. Pete Wilson that prohibits the hiring of violent felons and requires criminal background checks on all employees be completed before they start work.

The legislation was prompted by the May slaying of Rio Linda High School senior Michelle Montoya, allegedly by a school custodian with a previous conviction for manslaughter who was hired before a background check was completed.

While the school safety laws went into effect immediately, local school officials said they already had been waiting for background checks to be completed before bringing employees on board. The attorney general's office reports that fingerprint requests from schools statewide have doubled since this time last year.

But in many cases, volunteers may have as much or more access to children as some school employees. And that reality has forced school officials to walk a fine line between protecting



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Thomas' brain abnormal, defense experts testify: Doctor's conclusions blasted as 'junk science'

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their students and driving away needed volunteers.

"It's a very difficult question," said Jay Schenirer, president of the Sacramento City Unified School District board, which is considering a new volunteer policy. "We don't want to go overboard, so we need to find a balance between the safety of our children and the education of our children."

Last spring, for instance, a man on probation for statutory rape was allowed to become a volunteer choir director at Kennedy High School without a background check. In July, he was sentenced to prison for having unlawful sex with three minor girls -- two of whom he met in the choir.

Districts also must figure out how to pay for fingerprint checks of volunteers, which costs \$32 to \$42 per person.

Another concern comes from parents who consider background checks a burden, or even a punishment, for helping out at their children's schools.

Already, the Sacramento City district's proposed policy has run afoul of some parent volunteers who are upset that they could be included in a "high-risk" category, which would require them to be fingerprinted and undergo a background check. That category specifies that persons working more than once a month for more than three months -- including mentors, classroom helpers and yard duty monitors -- must be checked.

"The parents shouldn't have to pay for the thing that happened in Rio Linda. That was a school employee, not a parent," said Loretta Cabrera, who, with two children at Leonardo DaVinci magnet school, has an annual 45-hour parent participation requirement. "I think (the district) was just really jumping the gun and overreacting.

"It's not that I'm naive enough to think my children would be safe with any parent at the school," she added. But "the point is that most of us know each other, and we are always there with the teacher."

Cabrera said she finds a potential fingerprinting requirement, at her school's request for her Social Security number, intrusive.

However, she said she thinks background checks would be appropriate for prospective volunteers who do not have children at the school where they want to work.

Sacramento City's draft policy has been sent back to a

committee for more work and is not expected to be voted on by the board until early November.

In addition to the city district, the Elk Grove, San Juan and Folsom Cordova unified districts have adopted or are working on similar policies. Grant Unified High School District officials said they already have on the books a policy requiring fingerprints of anyone volunteering at a school on a regular basis.

The policy adopted unanimously last week¹ by the Elk Grove Unified Board of Education may address some of the concerns of parents like Cabrera. Under that policy, only volunteers who work with children without direct supervision of a district employee will be fingerprinted for background checks. Officials estimate that includes 10 to 15 percent of the district's volunteers, or some 300 to 500 people.

"We didn't want to do it in a way that would discourage volunteers," said Superintendent Dave Gordon. But he said district leaders saw the need to take precautions in cases in which volunteers -- from business mentors to field trip drivers -- would be alone with students.

Dave Dal Ben, a parent who sits on a superintendent advisory board, said he personally doesn't have a problem with the new policy.

But as a parent of a child on a high school wrestling team, he worries that the policy could have a "chilling" effect on parent involvement.

"It's hard enough to get volunteers," he said. But he hopes that the "safety of our children is so paramount in a parent's mind, (they'll be) willing to accept little risk."

The Folsom Cordova Unified School District already has a policy in which volunteers who "regularly perform duties similar to teachers of instructional aides" are fingerprinted, said Floyd Andrus, director of researcher and evaluation and special programs.

But the district is working to make the policy more explicit to require background checks of anyone who works independently with children. It also would provide them "extensive training" on issues such as appropriate language and touch when working with students, Andrus said.

The San Juan Unified School District also has taken its volunteer policy one step further -- now requiring that no

volunteers work with children without the presence of another adult, according to spokeswoman Christine Olsen.

"Fingerprints are a good precaution, but they shouldn't be the only precaution," Olsen said. She also urged parents "to look at all the adult relationships their child is having," with school employees or others.

The new state laws added a prohibition of hiring violent felons to the previous exclusions for sex and drug offenses.

But only two districts, Sacramento City and Elk Grove, said they had or planned to recheck current employee records for violent felonies. The revised laws only apply to new hires.

Sacramento City spokeswoman Maria Lopez said current employees were rescreened and "no new issues came up." She did not provide more specifics.

Elk Grove's Gordon said he plans to have his staff rescreen employees for violent felonies.

"If something like that pops up, we will take a look at it," but it will not be grounds for an automatic firing, which likely would not be legal, he said.

"Our standard is the quality of their performance since they've been with us," he said.

None of the districts surveyed reported any major delays in hiring due to the wait for background checks.

Ross said the Department of Justice has 30 days to respond to a request for a background check and has been doing so in about 22 days. For an expedited check, which costs \$10 more, the department must respond within 17 days and has been doing so in about 12, he said.

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CALIFORNIA COMMISSION ON TEACHER CREDENTIALING

1900 Capitol Avenue
Sacramento, California 95814-4213



EXECUTIVE OFFICE
(916) 445-0184

98-9826

December 28, 1998

TO: All Individuals and Groups Interested in the Activities of the
California Commission on Teacher Credentialing

FROM: Sam W. Swofford, Ed.D., Executive Director

SUBJECT: CCTC Accepting Livescan Fingerprint Receipts

Effective January 1, 1999, the Commission will begin accepting livescan fingerprint submissions for first-time applicants from all agencies and individuals. Livescan electronically transmits fingerprints to the California Department of Justice (DOJ) and, through DOJ, to the FBI in place of fingerprint cards. Many districts and county offices of education have been submitting livescan fingerprints for employment purposes. On January 1, 1999, the livescan fingerprints may be submitted for licensing. The Commission has developed a "Request for Livescan Service - Applicant Submission" form (41-LS) which must be submitted to the livescan operator at the time prints are scanned. After the prints have been transmitted, the livescan operator will return the second and third copies of the form to the applicant. The second copy is to be submitted to the Commission in place of fingerprint cards and the fingerprint fee.

The Commission wishes to thank Kathryn Benson and her staff in the San Luis Obispo County Office of Education for their help testing livescan fingerprint processing for certification purposes. In the test, the Commission actually received clearances from both the DOJ and FBI before an application reached a Certification Officer's desk; in some cases before the application was even received by the Commission. When livescan is used in place of fingerprint cards, our test revealed that DOJ responses are nearly immediate and the FBI response time can be up to two months shorter.

Procedure for Submitting Livescan Prints

There are two considerations that must be addressed when submitting livescan prints to the Commission. First, the Commission will not collect the fingerprinting processing fees, those will be collected by the livescan operator. The copy of the "Request for Livescan Service" must be attached to the application as proof that fingerprints were submitted by livescan and that the fingerprint fee was paid. When submitting applications with the livescan form, enclose only the application fee.

Second, the Commission's ORI number must be entered into the data collection screen by the livescan operator before the prints are transmitted to DOJ. This number identifies the Commission as the submitting agency and assures that the responses are sent to the Commission. The number appears on form 41-LS.

Applications submitted to the Commission with the livescan form need to include the Credential Application (41-4), supporting documentation, Application for Character and Identification Clearance (41-CIC), Request for Livescan Service (41-LS) and the application fee. Do not submit the DOJ and FBI fingerprint fees to the Commission.

Livescan Stations

There are a number of livescan stations located throughout the state. Several districts and county offices of education have installed livescan stations to expedite the process of submitting fingerprints for employment. In addition, many county sheriffs' offices will do livescan fingerprinting for applicants. The Department of Justice web page <www.caag.state.ca.us/app/contact.pdf> lists the locations that have livescan machines provided by DOJ. Contact the offices closest to you to see if they have the equipment and what their policies are concerning credential applicants and the collection of fees.

In addition, there is a private firm, Sylvan/Identix, that provides fingerprinting services. The applicant calls in advance to schedule an appointment. During the call the applicant provides his or her identification data and the Commission's ORI number, then arranges for payment of the fees. When the applicant arrives for the appointment, the livescan operator verifies the applicant's identity (photo ID required), scans the fingerprints and transmits the prints to DOJ. Sylvan/Identix charges \$16.00 for this service. Appointments are scheduled every five minutes.

Sylvan/Identix services will be available in San Francisco in mid-January 1999. Applicants may call 1-888-467-2080 for an appointment. The company plans to offer services in San Bernardino county by March and hopes to follow with services in San Diego and Los Angeles counties by June. Employers and IHEs in these counties may e-mail the company at <sylvanidx@aol.com> to confirm start-up dates. Employers and IHEs in other counties may call Sylvan/Identix Regional Manager Fred Mazzi at (650) 528-4225 to discuss establishing services in other locations.

Fees

The applicant is responsible for paying the DOJ and FBI fingerprint processing fees, a total of fifty-six dollars (\$56), at the time the prints are scanned. The fees for livescan fingerprints are NOT submitted to the Commission; the Commission only collects fees when paper fingerprint cards are submitted with the application.

In addition, the applicant must pay the fee charged by the livescan operator. This fee generally ranges from ten to twenty dollars depending on the station. Some stations charge the livescan fee for each transmission - one fee for processing prints for

employment and a second fee for processing them for certification – but most charge a single fee if the two transactions are completed at the same time.

“Request for Livescan Service” Forms

The Commission will provide preprinted three-part “Request for Livescan Service – Applicant Submission” forms to employing agencies and institutions of higher education as needed in place of fingerprint cards. Most agencies will need to keep a supply of both, because not all applicants will be able to get to a livescan station. Livescan forms may be requested from the Commission by calling the Certification Support Unit at (916) 445-5941. A sample of the form is attached for your information. The instructions on the back of the form explain the process.

Questions

If you have questions about livescan fingerprinting for certification purposes, you may call the Commission’s Information Services Office any workday at (916) 445-7254 or send e-mail to <credentials@ctc.ca.gov>.

State of California
CALIFORNIA COMMISSION ON TEACHER CREDENTIALING
Box 944270
Sacramento, CA 94244-2700
(916) 445-7254
Web site: <http://www.ctc.ca.gov>

Request for Livescan Service - Applicant Submission
(See instructions on back page.)

Applicant Information (To be completed by applicant)

Name of Applicant: _____
(Please Print)

Type of Application: **Certification or Licensing**

Position or Job Title: **Applicant for Teacher Certification**

Level of Service Requested: DOJ FBI If resubmission, list Original ATI No. _____
(Shown on Reject Notice)

Applicant Personal Descriptor Information (To be completed by applicant)

Date of Birth: _____ Former Names: _____

Height: _____ Weight: _____

Place of Birth: _____ SEX: Male Female

CDL No: _____ Hair/Color: _____ Eye/Color: _____

Social Security No: _____ Home Address: _____

Contributing Agency:

California Commission
on Teacher Credentialing
Box 944270
Sacramento, CA 94244-2700

OCA#: _____
(Social Security Number of Applicant)

E-Mail Code: 03294

ORI: A0281

Livescan Transaction Completed: (To be completed by livescan operator)

Name of Operator Terminal No. Date Amount Collected/Billed
(DOJ & FBI fees must be collected by livescan operator. If the fees are not collected
cards must be printed.)

 Transmitted to DOJ Card Printout

ATI No.

ORIGINAL - Livescan Operator
SECOND COPY - Submit to Commission on Teacher Credentialing with credential application.
THIRD COPY - Applicant

41-LS 8/98

Request for Livescan Service - Applicant Submission

The California Education Code requires that all individuals who seek to obtain California public school credentials, permits and waivers receive fingerprint clearance from the California Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) through the Commission. Individuals who have received fingerprint clearance through a public school district, other California agencies or in other States are not exempted from this process.

The livescan process replaces the traditional fingerprints cards that are required by the Commission. Your prints will be electronically sent to the DOJ who in turn will request clearance from the FBI. Both organizations will send clearance responses to the Commission.

When applying for a credential, permit or waiver you must submit the second copy of this form (41-LS), a completed Application for Character and Identification Clearance (41-CIC) and the appropriate application fee to the Commission. The fingerprint fee for the DOJ and FBI will be collected by the Livescan operator and does not need to be submitted to the Commission. There may be a fee charged by the Livescan operator to process this submission.

Instructions

Applicant Information Section (To be completed by applicant)

Please print your full legal name.

Applicant Personal Descriptor Information (To be completed by applicant)

Please complete all requested information. "CDL" is an abbreviation for a California Driver's License.

Please use the following abbreviations when completing the hair and eye color requests:

BLK (Black), BLND (blonde), BL (blue), BRN (brown), GRN (green), GRY (gray), and HZL (Hazel).

Contributing Agency (To be completed by livescan operator)

Please use the applicants social security number for the OCA number.

Livescan Transaction Completed: (To be completed by livescan operator)

Fees for both the DOJ and the FBI must be collected by the livescan operator when fingerprints are being submitted for Commission on Teacher Credentialing. If the fees are not collected, cards must be printed and the applicant will submit the fingerprint cards and fees to the Commission.



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News Release

**National Association of Insurance Commissioners
(NAIC)**
 2301 McGee
 Suite 800
 Kansas City, Missouri 64108
 (816) 842-3600 (816) 783-8175 Fax

CONTACT: Heidi Robertson, (816) 7
Kris Welschmeyer, (81

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NAIC Debuts LiveScan Fingerprint Background Check System

Proposed System Would Speed Agent-Licensing Process, Help Protect Consumers

KANSAS CITY, Mo. (May 9, 2001) — Continuing its efforts to protect consumers and prevent insurance fraud, the National Association of Insurance Commissioners (NAIC) debuted the prototype of a new electronic system for fingerprint background checks. Unveiled here at the 2001 E-Regulation Conference, sponsored by the NAIC and the National Insurance Producer Registry (NIPR), the LiveScan Electronic Fingerprint Technology would be used to help access FBI criminal history information once approval is given from Congress.

"The GAO has specifically recommended that state insurance departments be granted a federal criminal history data — and the NAIC has made this request several times in the years," said NAIC Secretary-Treasurer and Arkansas Insurance Commissioner Mike Picot. "Today, only three states — California, Florida and Idaho — have consistent access to the FBI database for routine checks of criminal history. By developing the LiveScan Fingerprint Technology, we're ready if and when Congress gives us approval to link directly to the FBI's fingerprint database."

Created by Lockheed Martin Information Systems and Integrated Biometric Technology, LiveScan Fingerprint technology would reduce the turnaround time for FBI fingerprint requests from several months to a couple of days, greatly expediting the licensing process and helping prevent crimes against insurance consumers.

"The Lockheed Martin and Integrated Biometric Technology alliance provides the NAIC with the ability to achieve biometric-based background clearances for the insurance industry," said Lockheed Martin Information Systems President John Hallal. "New technologies and services are needed to protect consumers and prevent insurance fraud."

we provide bridge the gap between users and state or national systems, expanding the achieved via biometric identification."

Using this system, the NAIC would receive and store electronic fingerprints submitted to by people applying for a license to sell insurance. With the LiveScan technology, state could access the digital fingerprints centrally, instead of requiring the applicant to be fingerprinted separately for each state they want to be licensed in.

The NAIC will then submit the fingerprints to the FBI for a search against the Fingerprint Identification Record System (FIRS). Based on those findings, the NAIC will update its State Producer Licensing Database, which is a confidential, online information exchange for state insurance departments. The states could then do further background checks if necessary then make the licensing decision and notify the applicant.

"The NAIC already maintains several confidential databases on behalf of our members, including the State Producer Licensing Database, which contain important licensing information on nearly three million agents and brokers," Pickens added. "The LiveScan Fingerprint technology is just one more way we can serve as an intermediary for our members — and help make the licensing process more efficient and effective for agents, and safer for consumers."

About the NAIC

Headquartered in Kansas City, Mo., the National Association of Insurance Commissioners is a voluntary organization of the chief insurance regulatory officials of the 50 states, the District of Columbia and four U.S. territories. The association's overriding objective is to protect consumers and help maintain the financial stability of the insurance industry by offering financial, accounting, legal, computer, research, market conduct and economic expertise. Formed in 1871, it is the oldest association of state officials. For more information, visit the NAIC on the Web at www.naic.org.

About Lockheed Martin

Headquartered in Bethesda, Md., Lockheed Martin (NYSE: LMT) is a global enterprise corporation engaged in the research, design, development, manufacture and integration of advanced technology systems, products and services. The Corporation's core businesses are systems integration, space, aeronautics and technology services. For more information, visit www.lockheedmartin.com/lmis.

About Integrated Biometric Technology

Headquartered in Dayton, Ohio, Integrated Biometric Technology, formerly Fingerprinting, LLC, provides electronic fingerprint products and service to the applicant fingerprint, time and secure access industry. IBT is on the Web at www.integratedbiometric.com.

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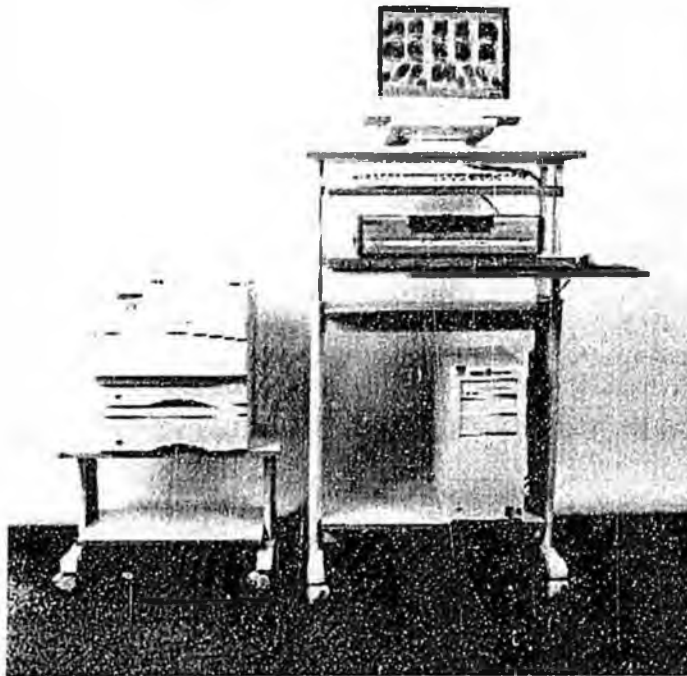


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Electronic Fingerprint Capture Station (EFCS)

The **Electronic Fingerprint Capture Station (EFCS) 2100** uses a Pentium III personal to host the **Integrated Biometric Technology** fingerprint capture application. The EFCS manages a livescan tenprinter and provides capture, processing, storage, and transmiss electronic fingerprint records.



Desktop EFCS 2100

The Desktop EFCS 2100 is shown here on a mobile stand. This configuration allows you to easily move the system within your facility as needed.



Fingerprint Capture with EFC

The EFCS 2100 makes it easy for you capture fingerprints. On-screen display print during the rolling process allows y



Laptop EFCS 2100

The Laptop EFCS 2100 provides the ultimate in portable livenesscan fingerprinting. The livenesscanner can be delivered with a hard plastic case, allowing you to carry the complete system to remote locations for fingerprint capture.

make an immediate assessment of print quality. Automatic sequencing software guides the operator through the fingers in the proper order, providing visual cues to make it clear where you are in the capture process. Automatic capture detection senses the completion of print capture, and steps to the next finger without operator intervention. Following capture, the fingerprint is passed to an image quality algorithm and a quality score is displayed. At any point in the process, you may choose to take a print, and then resume the sequence.

Specifications

Desktop EFCS 2100

- 933 MHz Pentium III
- 128 MB RAM
- 17" monitor
- 20 GB hard disk
- 1.44 MB floppy drive
- 32x CD-RW
- 56k modem
- 10/100 Ethernet card

Portable EFCS 2100

- 850 MHz Pentium III
- 128 MB RAM
- 15" TFT LCD display
- 10 GB hard disk
- 32x CD-RW

ID 1000 Livescanner

- 500 dpi
- IQS Appendix F
- 50% MTF at 5 cyc/mm
- +3 pixels linearity
- FireWire (IEEE 1394) interface
- 200 Mbps data transfer
- 23 lbs
- 3.75" H x 8.0" D x 17.5" W

Software

- Windows 2000 Professional
- 15:1 WSQ compression
- ANSI NIST compliance
- EFTS 7.0

- 56k modem
- 10/100 Ethernet card
- 7.4 lbs

Information Request Form

Select the items that apply, and then let us know how to contact you.

Send product literature:

Have representative contact me:

Potential number of stations:

*Name

*Title

*Company

Address

*E-mail

Phone

**Required fields*

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Alaska State Legislature

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Senate

While in session

State Capitol

Juneau, Alaska

99801-1182

(907) 465-4797

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SENATE DISTRICT F

Senate Bill 179:

"An Act relating to criminal history records and background checks; allowing persons to teach in the public schools for up to five months without a teaching certificate if the person has applied for a certificate and the application has not been acted upon by the Department of Education and Early Development; allowing teacher certification for certain persons based on a criminal history background check without fingerprints; and providing for an effective date."

Sponsor: Senator Gene Therriault

Senate Bill 179 is a comprehensive package that accomplishes three important tasks related to performing background checks for licensing, certification and employment. It allows teachers to receive a name based background check in circumstances where their fingerprints are illegible or nonexistent. In addition, it gives the Department of Education the ability to grant a teaching certificate applicant a sixty-day extension on top of the three-month application period if their prints are backlogged and not processed in a timely manner. Finally, SB 179 conforms Alaska Statute to Federal Law, to maintain Alaska's access to federal background checks.

Senate Bill 179 will create an alternative for people who submit two separate sets of fingerprints that the state examiner determines to be illegible due to permanent skin condition. The measure also allows an alternative process if the applicant has a disability that prevents submittal all together. The applicant would then be allowed to have a background check performed based on their name, thus giving parents some assurance that a criminal background check is performed on all teachers relieving teachers who are unable to submit fingerprints from having to resubmit paperwork every three months.

The bill authorizes, but doesn't require, the Department of Education to grant an additional sixty-day extension on teacher applications if fingerprints are not returned within three months if the delay is due to processing rather than the tardiness of the applicant. The reason for this extension is that some teachers have been required to submit additional prints even though their prints were not denied but were still being processed. Some teachers who were not getting fingerprints processed within three months were being put on leave or were forced to be classified as a substitute teacher with lower pay and no benefits.

Finally, SB 179 fills current statutory gaps that the Department of Justice has determined have put the State of Alaska out of compliance with federal law regarding requesting and receiving federal background checks. If this legislation is not enacted, the State of Alaska risks losing its ability to get federal background checks performed after July 30, 2004.



U.S. Department of Justice

Federal Bureau of Investigation

Clarksburg, WV 26306

April 11, 2003

Ms. Diane Schenker
Manager
Criminal Records and Identification Bureau
Department of Public Safety
5700 East Tudor Road
Anchorage, AK 99507-1225

Dear Ms. Schenker:

Reference is made to your facsimile dated March 25, 2003, requesting an extension of the grace period to amend Alaska statutes, that were found defective during the comprehensive review conducted by the Access Integrity Unit (AIU).

As requested we have changed the grace period from the original date of June 30, 2003, to June 30, 2004, to permit the amended statutes to be reviewed during the 2004 legislative cycle. However, should the defective statutes not be amended during your next legislative session, an additional grace period will not be granted and fingerprint submissions under the defective statutes will no longer be accepted.

Again, we appreciate your efforts to make the necessary changes to bring Alaska statutes into compliance with established Public Law 92-544 criteria. Please remember that the AIU stands ready to assist you by reviewing any proposed legislation.

STATE OF ALASKA

MEMORANDUM

State of Alaska
 Department of Education
 & Early Development

To: Zach Warwick, Legislative Aide
 For Senator Therriault

Date: March 13, 2003

Phone:

File:

From: Linda Judd *Linda Judd*
 Supervisor, Teacher Certification

Subject: Fingerprint Submissions

Per your request, Teacher Education & Certification has collected the following data for fiscal year 2003, to date.

Total number of applicants who submitted fingerprints:	1,567	
Applicants who were required to resubmit at least two times* for Alaska Department of Public Safety clearance	9	.6%
Applicants who were required to resubmit at least two times* for F.B.I. clearance	33	2.1%
Total number of applicants who were required to resubmit at least two times* (D.P.S. and F.B.I. combined)	42	2.7%

* "resubmit at least two times" means a total of at least three submissions (initial submission plus two resubmissions)

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 179
(S) Publish Date: 5/10/03

Revision Date/Time (Note if correction): _____ Dept. Affected: EED
Title An Act allowing teacher certification BRU Teaching & Learning Support
based on a criminal history check Component Teacher Certification
Sponsor Senator Therriault
Requester _____ Component No. 1240

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

POSITIONS	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This is a zero fiscal note.

Prepared by: Barbara Thompson
Division: Teaching & Learning Support
Approved by: Karen Rehfeld, Acting Commissioner
Agency: Department of Education

Phone: 907-465-8727
Date/Time: 4/14/03 4:31 PM
Date: 4/14/2003

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSSB 179(FIN)
(S) Publish Date: 3/8/04

Revision Date/Time (Note if correction): _____ Dept. Affected: DPS
Title Teacher Certification: Fingerprints BRU Statewide Support
Component Criminal Records & ID
Sponsor Senator Therriault
Requester Senate Finance Component No. 1190

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The bill clarifies DPS' current practices for fingerprint-based criminal record checks in order to (1) ensure that DOE accepts a name-based criminal record check in lieu of a fingerprint-based check when an applicant for a teaching license is physically incapable of being fingerprinted; and (2) ensure that Alaska remains eligible to submit fingerprints to the FBI for national criminal record checks for persons applying for sensitive positions or licenses, by rewording certain statutes to meet requirements in federal law (Public Law 92-544). If the statutes are not reworded, the FBI will no longer accept fingerprints for national criminal record checks for certain licenses/positions after June 30, 2004. Since the bill preserves the status quo, there is no fiscal impact to DPS.

Prepared by: Diane Schenker, Criminal Justice Planner Phone 907-269-5092
Division: Statewide Services Date/Time 3/8/04 11:01 AM
Approved by: William Tandeske, Commissioner Date 3/8/2004
Agency: Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: CSSB 179 (FIN)
 (S) Publish Date: 3/8/04

Revision Date/Time (Note if correction): _____ Dept. Affected: EED
 Title "An Act relating to criminal history records and background checks; allowing persons..." RDU Teaching and Learning Support
 Component Teacher Certification
 Sponsor Senator Therriault
 Requester Senate HESS Component No. 1240

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This is a zero fiscal note.

Prepared by: Barbara Thompson, Director Phone 907-465-8679
 Division Teaching and Learning Support Date/Time 3/8/04 8:41 AM
 Approved by: _____ Date 3/8/2004
 Agency Education & Early Development

SB

1988

ALASKA STATE SENATE



Session:
State Capitol
Juneau, Alaska 99801-1182
(907) 465-2327
(907) 465-5241 Fax

Interim:
119 N. Cushman, Suite 201
Fairbanks, Alaska 99701
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Senator_Ralph_Seekins@legis.state.ak.us

Senator Ralph Seekins
District D

SB 198 Sponsor Statement

An Act Relating to Recovery of Civil Damages by a Peace Officer or Firefighter

Senate Bill 198 revises the common law known as the "Firefighter's Rule". This rule precludes firefighters and peace officers from recovering civil damages for injuries caused by any negligent act inflicted while on duty. The "Firefighters Rule" does not distinguish between negligent acts requiring the firefighter's or peace officer's response from negligent acts that are *unrelated* to the reason the firefighter or peace officer was required to respond.

For example, as currently employed, the "Firefighters Rule" precludes a police officer from suing for damages for injuries suffered as a result of being struck by a drunk driver during the course of transporting a prisoner to the courthouse. This despite the fact that the negligent act, in this case the drunk driving, is unrelated to the duty the officer was performing at the time. Senate bill 198 corrects this incongruity. Yet, on the other hand, this bill does nothing to change the case where the police officer is injured during the course of a pursuit of the drunk driver. This is considered a foreseeable risk associated with the profession and, accordingly, well within that which the "Firefighter's Rule" should cover.

Therefore, Senate bill 198 makes a distinction between negligence that is related to the reason the firefighter or peace officer is responding and negligence that is unrelated to the reason the firefighter or peace officer is responding. In the first instance, it *does not* allow a civil action. Instead the firefighter or peace officer must rely on the state's workers compensation system. However, in the case where injury was caused by a negligent act *not related* to the reason for the firefighter or peace officer's response, then—under this legislation—a civil action can be brought against the at-fault party.

CS FOR SENATE BILL NO. 198(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 5/9/03

Referred: Judiciary

Sponsor(s): SENATOR SEEKINS

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to recovery of civil damages by a peace officer or fire fighter; and**
2 **providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** AS 09.65 is amended by adding a new section to read:

5 **Sec. 09.65.290. Liability involving a peace officer or fire fighter.** (a) A
6 peace officer or fire fighter injured while in the line of duty or the personal
7 representative of a peace officer or fire fighter who died in the line of duty may not
8 bring a civil action to recover damages for a negligent act or omission if the negligent
9 act or omission created the need for the activity being performed by the peace officer
10 or fire fighter.

11 (b) This section does not apply to a negligent act or omission that is unrelated
12 to the activity that created the need for the presence of the peace officer or fire fighter.

13 (c) In this section, "fire fighter" means a person employed by a municipal fire
14 department or who is a member of a volunteer fire department registered with the state

1 fire marshal, or a person registered for purposes of workers' compensation with the
2 state fire marshal as a member of a volunteer fire department.

3 * **Sec. 2.** This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 198
 (S) Publish Date: 5/9/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to recovery of civil damages by BRU Civil Division
a peace officer or firefighter; . . ." Component Special Litigation
 Sponsor Senator Seekins
 Requester Senate State Affairs Committee Component No. 2213

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 This bill would amend common law that precludes a peace officer or firefighter or their representative from recovering civil damages for a negligent act or omission resulting in injury or death in the line of duty to specifically exclude negligent acts or omissions that are unrelated to the activity that created the need for the presence of the peace officer or firefighter.

 Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Phone (907) 465-5370
 Division Attorney General's Office Date/Time 5/5/03 2:07 PM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 5/5/2003
 Agency Department of Law

C

Supreme Court of Alaska.

Brent MOODY, Appellant,

v.

DELTA WESTERN, INC., Appellee.


No. S-9625.

Jan. 11, 2002.

Police chief brought negligence action against fuel truck owner, arising from incident in which, after owner's employee left unlocked truck in driveway, with keys in ignition, intoxicated individual entered truck and rammed it into van in which chief was a passenger, causing chief permanent injuries, as chief was responding to reports of recklessly driven fuel truck. Owner moved for summary judgment, which the Superior Court, Third Judicial District, Dillingham, Elaine M. Andrews, J., granted. Chief appealed. The Supreme Court, Matthews, J., held that, in a matter of first impression, the Fireman's Rule applied to bar chief's action against owner.

Affirmed.

West Headnotes

[1] Appeal and Error  893(1)
30k893(1) Most Cited Cases

In reviewing a question of law, Supreme Court applies de novo standard of review, adopting the rule of law which is most persuasive in light of precedent, reason and policy.

[2] Automobiles  210
48Ak210 Most Cited Cases

Firefighter's Rule, which holds that firefighters and police officers who are injured may not recover based on negligent conduct that required their presence, applied to bar police chief's negligence action against fuel truck owner arising from incident in which, after owner's employee left unlocked truck in driveway, with keys in ignition, intoxicated individual entered truck and rammed it into van in which chief was a passenger, causing chief permanent injuries, as chief was responding to reports of recklessly driven fuel truck.

[3] Negligence  570

272k570 Most Cited Cases

"Firefighter's Rule," which holds that firefighters and police officers who are injured may not recover based on the negligent conduct that required their presence, bars only recovery for negligence that creates the need for the public safety officer's service, and thus does not apply to negligent conduct occurring after the police officer or firefighter arrives at the scene or to misconduct other than that which necessitates the officer's presence; such misconduct may include failure to warn of pre-existing known but hidden dangers.

[4] Negligence  1204(1)
272k1204(1) Most Cited Cases

[4] Negligence  1311
272k1311 Most Cited Cases

"Contractor for repairs" exception to the general duty of reasonable care which holds that an owner is under no duty to protect the contractor against risks arising from the condition the contractor is hired to repair, and thus is not liable even if the condition was the product of the owner's negligence, is grounded in necessity and fairness.

*1139 Kristen D. Pettersen, Ray R. Brown, Dillon & Findley, P.C., Anchorage, for Appellant.

Richard A. Weinig, Pletcher, Weinig, Fisher & Dennis, Anchorage, for Appellee.

William B. Aitchison, Aitchison & Vick, Inc., Portland, Oregon, for Amicus Curiae Anchorage Police Department Employees Association.

Before: FABE, Chief Justice, MATTHEWS, EASTAUGH, and BRYNER, Justices.

OPINION

MATTHEWS, Justice.

The question in this case is whether the so-called Firefighter's Rule applies in Alaska. The Firefighter's Rule holds that firefighters and police officers who are injured may not recover based on the negligent conduct that required their presence. For public policy *1140 reasons we join the overwhelming majority of states that have adopted the rule.

I. FACTS AND PROCEEDINGS

The facts of this case are undisputed. On or around July 25, 1996, a Delta Western employee left a fuel truck owned by Delta Western in a driveway in Dillingham. The keys were in the ignition, the door was unlocked, and the truck contained fuel and weighed over 10,000 pounds. Delta Western had a policy of removing the keys from the ignitions of its trucks. Delta Western enacted this policy because of past incidents involving the theft and unauthorized entry of its trucks.

Joseph Coolidge, who was highly intoxicated, entered the unlocked truck and proceeded to drive around Dillingham. He ran cars off the road, nearly collided with several vehicles, and drove at speeds exceeding seventy miles per hour. Brent Moody, the chief of the Dillingham Police Department, was one of the officers who responded to the reports of the recklessly driven fuel truck. The driver of the van in which Moody was a passenger attempted to stop the truck after moving in front of it, but Coolidge rammed the van, throwing Moody against the dashboard and windshield. Moody suffered permanent injuries.

Moody filed suit against Delta Western, alleging that the company (through its employe) negligently failed to remove the truck's keys from the ignition. In its amended answer, Delta Western argued that the "Firefighter's Rule" barred Moody's cause of action. Delta Western moved for summary judgment based on its Firefighter's Rule defense. The superior court granted Delta Western's motion, holding that the Firefighter's Rule bars police officers from recovering for injuries caused by the "negligence which creates the very occasion for their engagement."

Moody now appeals.

II. STANDARD OF REVIEW

[1] The question presented is one of law and of first impression: whether Alaska should adopt the Firefighter's Rule. We therefore apply the de novo standard of review, "adopt[ing] the rule of law which is most persuasive in light of precedent, reason and policy." [FN1]

FN1. *Newton v. Magill*, 872 P.2d 1213, 1215 (Alaska 1994) (quoting *Ford v. Municipality of Anchorage*, 813 P.2d 654, 655 (Alaska 1991)).

III. DISCUSSION

[2] Nearly all of the courts that have considered whether or not to adopt the Firefighter's Rule have in fact adopted it. [FN2] Only *1141 one court has rejected it. [FN3] The New Jersey Supreme Court's reasoning in *Berko v. Freda* is typical of that of modern courts that have adopted the rule. [FN4] The superior court relied on *Berko* and explained the case as follows:

FN2. See *Grable v. Varela*, 115 Ariz. 222, 564 P.2d 911, 912 (App.1977); *Waggoner v. Troutman Oil Co.*, 320 Ark. 56, 894 S.W.2d 913, 915 (1995); *Walters v. Sloan*, 20 Cal.3d 199, 142 Cal.Rptr. 152, 571 P.2d 609, 610 (1977) (abolished by Cal. Civil Code § 1714.9); *Kaminski v. Town of Fairfield*, 216 Conn. 29, 578 A.2d 1048, 1053 (1990); *Carpenter v. O'Day*, 562 A.2d 595, 601 (Del.Super.1988), *aff'd*, 553 A.2d 638 (Del.1988); *Kilpatrick v. Sklar*, 548 So.2d 215, 216-18 (Fla.1989) (limited by Fla. Stat. Ann. § 112.182); *Martin v. Gaither*, 219 Ga.App. 646, 466 S.E.2d 621, 624 (1995); *Thomas v. Pane*, 72 Haw. 191, 811 P.2d 821, 824 (1991); *Winn v. Frasher*, 116 Idaho 500, 777 P.2d 722, 725 (1989); *Court v. Grzelinski*, 72 Ill.2d 141, 19 Ill.Dec. 617, 379 N.E.2d 281, 285 (1978) (rule employed in premises liability cases); *Sports Bench, Inc. v. McPherson*, 509 N.E.2d 233, 234-35 (Ind.App.1987); *Pottebaum v. Hinds*, 347 N.W.2d 642, 643 (Iowa 1984); *Calvert v. Garvey Elevators, Inc.*, 236 Kan. 570, 694 P.2d 433, 438 (1985); *Sallee v. GTE South, Inc.*, 839 S.W.2d 277, 279 (Ky.1992); *Holloway v. Midland Risk Ins. Co.*, 759 So.2d 309, 313-14 (La.App.2000); *Flowers v. Rock Creek Terrace Ltd.*, 308 Md. 432, 520 A.2d 361, 368 (1987); *Wynn v. Sullivan*, 294 Mass. 562, 3 N.E.2d 236, 237 (1936) (limited by Mass. Gen. Laws ch. 41 § § 100, 111F); *Kreski v. Modern Wholesale Elec. Supply Co.*, 429 Mich. 347, 415 N.W.2d 178, 188-89 (1987) (abolished by M.C.L. § § 600.2965-2967); *Armstrong v. Mailand*, 284 N.W.2d 343, 350 (Minn.1979) (abolished by Minn.Stat. § 604.06); *Phillips v. Hallmark Cards, Inc.*, 722 S.W.2d 86, 89 (Mo.1986); *Nared v. School Dist. of Omaha*, 191 Neb. 376, 215 N.W.2d

115, 117-18 (1974); *Moody v. Manny's Auto Repair*, 110 Nev. 320, 871 P.2d 935, 940 (1994) (limited by Nev.Rev.Stat. § 41.139); *Matarese v. Nationwide Mut. Ins. Co.*, 141 N.H. 311, 682 A.2d 258, 258- 61 (1996); *Krauth v. Geller*, 31 N.J. 270, 157 A.2d 129, 132-33 (1960) (abolished by N.J. Stat. Ann. § 2A:62A-21); *Moreno v. Marrs*, 102 N.M. 373, 695 P.2d 1322, 1325 (App.1984); *Santangelo v. State*, 71 N.Y.2d 393, 526 N.Y.S.2d 812, 521 N.E.2d 770, 772 (1988) (limited by Gen. Mun. § 205-a-e; Gen. Oblig. § 11-106); *Scheurer v. Trustees of Open Bible Church*, 175 Ohio St. 163, 192 N.E.2d 38, 43 (1963); *Smith v. Tully*, 665 A.2d 1333, 1335 (R.I.1995); *Carson v. Headrick*, 900 S.W.2d 685, 690 (Tenn.1995); *Campus Memt., Inc. v. Kimball*, 991 S.W.2d 948, 950 (Tex.App.1999) (rule employed in premises liability cases only); *Commonwealth v. Millsans*, 232 Va. 502, 352 S.E.2d 311, 315-16 (1987); *Maltman v. Sauer*, 84 Wash.2d 975, 530 P.2d 254, 257 (1975); *Huss v. Chicago & N.W. Ry. Co.*, 48 Wis.2d 321, 179 N.W.2d 885, 887-88 (1970).

FN3. See *Christensen v. Murphy*, 296 Or. 610, 678 P.2d 1210, 1218 (1984).

FN4. 93 N.J. 81, 459 A.2d 663 (1983).

In *Berko*, the defendant parked a Cadillac in a supermarket parking lot and left the keys in the ignition. Two juveniles stole the car and engaged in a high-speed chase with Officer Berko. The officer was injured while apprehending the juveniles and brought suit against the owner of the vehicle for negligence in leaving the keys in the ignition. The New Jersey Supreme Court held that, notwithstanding its finding that the car owner was negligent, the Firefighter's Rule insulated him from liability of the officer. The court stated:

Both [firefighters and police officers] are paid to confront crises and allay dangers by an uncircumspect citizenry, a circumstance that serves to distinguish firefighters and police from most other public employees. Citizens summon police and firefighters to confront danger. Government entities maintain police and fire departments in anticipation of those inevitable physical perils that burden the human condition, whereas most public employment posts are created not to confront dangers that will arise but to perform some other

public function that may incidentally involve risk ... [.]

This fundamental concept rests on the assumption that government entities employ firefighters and police officers, at least in part, to deal with the hazards that may result from their taxpayers' own future acts of negligence ... [.] Exposing the negligent taxpayer to liability for having summoned police would impose upon him multiple burdens for that protection.

There is at work here a public policy component that strongly opposes the notion that an act of ordinary negligence would expose the actor to liability for injuries sustained in the course of a public servant's performance of necessary, albeit hazardous, public duties. In absence of a legislative expression of contrary policy, a citizen should not have to run the risk of a civil judgment against him for negligent acts that occasion the presence of a firefighter at the scene of a carelessly set fire or of a police officer at a disturbance or unlawful incident resulting from negligent conduct.[FN5]

FN5. *Moody v. Delta W., Inc.*, No. 3DI-98-63-CI (Alaska Super., February 7, 2000) (quoting *Berko*, 459 A.2d at 666-67 (alteration in original)).

[3] Jurisdictions adopting the Firefighter's Rule emphasize its narrowness; the doctrine bars only recovery for the negligence that creates the need for the public safety officer's service.[FN6] Thus the Firefighter's Rule does not apply to negligent conduct occurring after the police officer or firefighter arrives at the scene or to misconduct other than that which necessitates the officer's presence.[FN7] Such misconduct may include failure to warn of pre-existing known but hidden dangers.[FN8]

FN6. See, e.g., *Kreski*, 415 N.W.2d at 183.

FN7. See *Neigharger v. Irwin Indus., Inc.*, 8 Cal.4th 532, 34 Cal.Rptr.2d 630, 882 P.2d 347, 352 (1994); see also *Gail v. Clark*, 410 N.W.2d 662, 666 (Iowa 1987) (holding firefighter's rule does not bar recovery where police officer is injured while performing a law enforcement activity unrelated to violation that necessitated his presence at the scene); *Kreski*, 415 N.W.2d at 189 (recognizing exceptional cases, such

as those involving willful misconduct, in which courts have refused to apply firefighter's rule to bar action; similarly adopting flexible approach to address "different fact patterns as they are presented").

FN8. See *Flowers*, 520 A.2d at 369.

Modern courts stress interrelated reasons, based on public policy, for the rule. The negligent party is said to have no duty to the public safety officer to act without negligence in creating the condition that necessitates the officer's intervention because the officer is employed by the public to respond to such conditions and receives compensation and benefits for the risks inherent in such responses. Requiring members of the public to pay for injuries resulting from such responses effectively imposes a double payment obligation on them. Further, because negligence is at the root of many calls for public safety officers, allowing recovery would compound the growth of litigation. FN9

FN9. See *Krauth*, 157 A.2d at 131 ("[I]n the final analysis the policy decision is that it would be too burdensome to charge all who carelessly cause or fail to prevent fires with the injuries suffered by the expert retained with public funds to deal with those inevitable, although negligently created, occurrences."); *Walters*, 142 Cal. Rptr. 152, 571 P.2d at 613 ("[A]bolition of the fireman's rule would burden our courts with litigation among the employer public agency, the retirement system, and the negligence insurer.").

[4] Courts find an analogy in cases in which a contractor is injured while repairing the condition that necessitated his employment. FN10 In these cases, the owner is under no duty to protect the contractor against risks arising from the condition the contractor is hired to repair, and thus is not liable even if the condition was the product of the owner's negligence. FN11 This "contractor for repairs" exception to the general duty of reasonable care is grounded in necessity and fairness. FN12 Property owners should not be deterred by the threat of liability to the contractor from summoning experts to repair their property, regardless of why repairs are needed. Further, owners have paid for the

contractor's expertise at confronting the very danger that injured him and should not have to pay again if the contractor is then injured. FN13 The same factors are found to apply with respect to the public's need to call for the services of public safety officers. FN14

FN10. See, e.g., *Krauth*, 157 A.2d at 131.

FN11. See, e.g., *Peters v. Titan Navigation Co.*, 857 F.2d 1342, 1345 (9th Cir.1988) (affirming summary judgment for shipowner regarding claims brought by hydraulic system repairman who was injured after slipping on spilled hydraulic fluid, because owner owes no duty to protect repairman from risks inherent in very condition he was hired to repair); see also 41 Am.Jur.2d, Independent Contractors § 41, n. 74 (1995) and the cases there cited.

FN12. See *Palenscar v. Michael J. Bobb, Inc.*, 439 Pa. 101, 266 A.2d 478, 481 (1970) ("It would be unjust to find that [the owner was negligent because he] should have repaired the system, and yet hold the company liable to one who had been employed to do exactly that.").

FN13. See *id.* at 480-81; see also *Anicet v. Gant*, 580 So.2d 273, 276 (Fla.App.1991) (describing contractor cases, where "the employee is deemed not to be entitled to a tort recovery arising from a condition for the encountering and correction of which he is specifically paid").

FN14. See *Krauth*, 157 A.2d at 131: [I]t is the fireman's business to deal with [fire] hazard and hence, perhaps by analogy to the contractor engaged as an expert to remedy dangerous situations, he cannot complain of negligence in the creation of the very occasion for his engagement. In terms of duty, it may be said there is none owed the fireman to exercise care so as not to require the special services for which he is trained and paid. Cf. *Anicet*, 580 So.2d at 276 (denying mental institution worker recovery for injuries inflicted by violently insane person;

analogizing to contractor cases, and also noting that the firefighter's rule, which at its core provides that "a person specifically hired to encounter and combat particular dangers is owed no independent tort duty by those who have created those dangers--even though ... the landowner or other defendant is actually guilty of negligence or of other fault in creating the dangers," presents "an apt analogy").

38 P.3d 1139

END OF DOCUMENT

We agree with the reasoning of the modern courts and with the analogy to contractor cases. The Firefighter's Rule reflects sound public policy. The public pays for emergency responses of public safety officials in the form of salaries and enhanced benefits. [FN15] Requiring members of the public to pay for injuries incurred by officers in such responses asks an individual to pay again for services the community has collectively purchased. Further, negligence is a common factor in emergencies that require the intervention of public safety officers. Allowing recovery would cause a proliferation of litigation aimed at shifting to individuals or their insurers costs that have already been widely shared. To borrow the language of the seminal *1143 *Krauth* case, "in the final analysis the policy decision is that it would be too burdensome to charge all who carelessly cause" conditions requiring a response by a public safety official "with the injuries suffered by the expert retained with public funds to deal with those inevitable, although negligently created," conditions. [FN16]

FN15. See AS 39.35.010-.690 (Public Employees Retirement System); AMC 03.85.010-.180 (Death, Disability and Retirement Benefits for Anchorage Police Officers & Firefighters).

FN16. 157 A.2d at 131.

We thus conclude that the Firefighter's Rule applies in Alaska. We reach this conclusion based on the merits of the rule as accepted by the overwhelming majority of the courts of our sister states. It follows that summary judgment was properly granted.

AFFIRMED.

CARPENETI, Justice, not participating.

SB

203

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: March 8, 2004

FURTHER REFERRALS: Finance

Date of Committee Action: March 18, 2004

The JUDICIARY Committee considered:

CSSB 203(FIN) am

CS FOR SENATE BILL NO. 203(FIN) am

ADMINISTRATIVE HEARINGS/OFFICE

"An Act relating to administrative hearings, to hearing officers, and to administrative law judges; establishing the office of administrative hearings and relating to that office; and providing for an effective date."

Recommends it be replaced with HCS or CS for SB 203 (JUD)
 For Senate Bills with new title: Technical Title New Title: HCR Same Title New Title

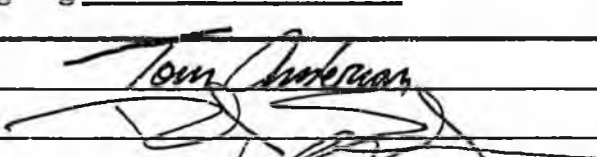
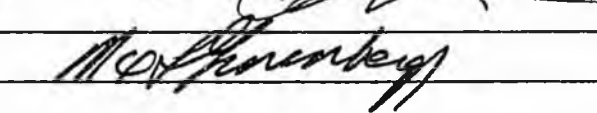
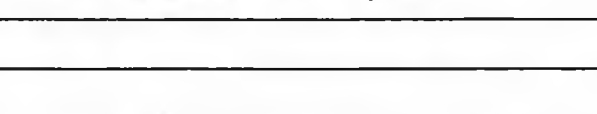
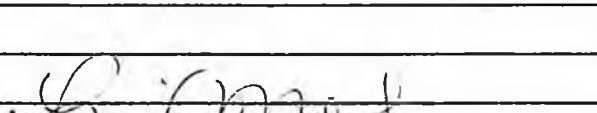
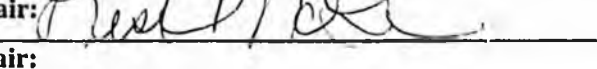
- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts.:

- ADM
- CEC
- COR
- CRT
- EED
- DEC
- DFG
- GOV
- HSS
- LEG
- LAW
- LWF
- MVA
- DNR
- DPS
- REV
- DOT
- UA

NEW FISCAL NOTES				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
CEC		✓		
ADM	1	✓		
REV	2	✓		
ADM	3	✓		
CEC	4	✓		
LAW	5		✓	
ADM	6	✓		
ADM	7	✓		
LWF	8			✓
DPS	9	✓		
HSS	10			✓

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
GOV	11	✓		
CEC	12		✓	
EED	13			✓
DEC	14		✓	
CEC	15	✓		
CEC	16	✓		
LAW	17		✓	
EED	18		✓	
REV	19	✓		
REV	20	✓		

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	ANDERSON	X			
	SAMUELS GAMBA	X			
	Gamba	✓			
	Gamba	-			
Chair: 	McGuire	✓			
Chair:					

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSSB 203 (JUD)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title Office of Administrative Hearings RDU Occupational Licensing (11)
 Component Occupational Licensing
 Sponsor Rules by Request Component No. 2360
 Requester Senate Finance

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1156 - Receipt Supported Services						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 153.9
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	-2					
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSSB 203 (JUD) establishes an Office of Administrative Hearings in the Department of Administration. Under the new Office of Administrative Hearings, the Division of Occupational Licensing would transfer its current Hearing Examiner (PCN 08-1040) and Law Office Assistant (PCN 08-1038) to the Department of Administration, included in the FY05 budget request.

The fund source for these positions are receipt supported services (RSS) from licensing fees. When the positions are transferred to the new office on or after January 1, 2005, it is anticipated that receipts from licensing fees (RSS) totaling \$77.0 (half of the total annual amount) will be transmitted via Inter-Agency Receipts to support the hearing services requested by Occupational Licensing.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144
 Division: Occupational Licensing Date/Time 3/1/04 4:08 PM
 Approved by: Edgar Blatchford, Commissioner Date 3/1/2004
 Agency: Department of Community and Economic Development

23-LS0903J
Cook
3/17/04

HOUSE CS FOR CS FOR SENATE BILL NO. 203()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to administrative hearings, to hearing officers, and to administrative
2 law judges; establishing the office of administrative hearings and relating to that office;
3 and providing for an effective date."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. The uncodified law of the State of Alaska is amended by adding a new section
6 to read:

7 PURPOSE AND INTENT. The purpose of this Act is to increase the separation
8 between the adjudicatory functions of executive branch agencies and the agencies'
9 investigatory, prosecutory, and policy-making functions. The legislature intends by this Act
10 to

11 (1) provide for the delivery of high quality adjudication services in a timely,
12 efficient, and cost-effective manner;

13 (2) ensure respect for the dignity of the individuals whose cases are being
14 adjudicated;

1 (3) foster open and clearly explained agency decisions and improve public
2 access to the process of administrative adjudication;

3 (4) guarantee protection of all parties' due process rights, increase the public
4 parties' perception of fairness in administrative adjudication, and foster acceptance of final
5 administrative decisions by the public and affected parties;

6 (5) protect the integrity of the process of administrative adjudication and
7 decisional independence of administrative adjudicators; and

8 (6) increase consistency in administrative procedures and decisions.

9 * **Sec. 2.** AS 44 is amended by adding a new chapter to read:

10 **Chapter 64. Hearing Officers and Office of Administrative Hearings.**

11 **Sec. 44.64.010. Office created.** (a) There is created in the Department of
12 Administration an independent office of administrative hearings under the direction of
13 the chief administrative law judge.

14 (b) The chief administrative law judge must

15 (1) be a resident of the state;

16 (2) have experience in administrative law;

17 (3) be licensed to practice law in this state and have been admitted to
18 practice law in this state for at least five years; and

19 (4) have experience representing clients in administrative or judicial
20 proceedings.

21 (c) The chief administrative law judge is appointed to a five-year term of
22 office by the governor and is subject to confirmation by the legislature. An individual
23 may serve not more than three full or partial terms as chief administrative law judge.
24 The governor may remove the chief administrative law judge from office only for
25 good cause and after a hearing conducted by the attorney general. The basis for
26 removal shall be stated in writing. A vacancy in the office of chief administrative law
27 judge shall be filled by the governor and the individual appointed serves for the
28 remainder of the term to which appointed.

29 (d) The chief administrative law judge shall receive a monthly salary that is
30 not less than Step A nor more than Step F, Range 27, of the salary schedule in
31 AS 39.27.011(a) for Juneau, Alaska. The chief administrative law judge is in the

1 partially exempt service.

2 **Sec. 44.64.020. Powers and duties of chief administrative law judge.** The
3 chief administrative law judge shall

4 (1) supervise the office;

5 (2) employ administrative staff, who shall be in the classified service;

6 (3) employ administrative law judges, who shall be in the partially
7 exempt service;

8 (4) preside over administrative hearings handled by the office or, based
9 upon the qualifications and expertise of the administrative law judges, assign
10 administrative law judges to preside over hearings, and protect, support, and enhance
11 the decisional independence of the administrative law judges;

12 (5) establish and implement performance standards, including
13 provision for timeliness, and peer review programs for administrative law judges
14 employed or retained by the office;

15 (6) make available and facilitate training and continuing education
16 programs and services in administrative procedure, administrative adjudication,
17 substantive law, alternate dispute resolution, and technical matters for administrative
18 law judges and other administrative adjudicators;

19 (7) survey administrative hearing participants and use other methods to
20 monitor the quality of administrative hearings held by the office and other state
21 agencies, and submit to the governor and the legislature on January 31 of each year the
22 results of the survey along with a report that includes a description of the activities of
23 the office and recommendations for statutory changes that may be needed in relation
24 to the administrative hearings held by the office or other state agencies;

25 (8) review and comment on regulations proposed by state agencies to
26 govern procedures in administrative hearings;

27 (9) enter into contracts as necessary to carry out the functions of the
28 office;

29 (10) annually prepare and submit to the commissioner of
30 administration a budget for the office for the next fiscal year that shall include and
31 separately identify funding for training and continuing education; a copy of the budget

1 submitted to the commissioner under this paragraph shall also be submitted to the
2 Finance Committee of each house of the legislature; and

3 (11) after consulting with affected agencies, adopt regulations under
4 AS 44.62 (Administrative Procedure Act) to carry out the duties of the office and
5 implement this chapter.

6 * **Sec. 3.** AS 44.64 is amended by adding new sections to read:

7 **Sec. 44.64.030. Jurisdiction of the office.** (a) The office shall conduct all
8 adjudicative administrative hearings required under the following statutes or under
9 regulations adopted to implement the statutes:

- 10 (1) AS 04.11.510(b)(1) and (c) (alcoholic beverages license);
11 (2) AS 05.15 (charitable gaming);
12 (3) AS 05.20 (recreational devices);
13 (4) AS 05.90.001 (special racing events);
14 (5) AS 06 (banks and financial institutions);
15 (6) AS 08 (occupational licensing), other than AS 08.08 and
16 AS 08.62.046;
17 (7) AS 10.06 (Alaska Corporations Code);
18 (8) AS 10.13 (Alaska BIDCO Act);
19 (9) AS 10.25.375 (Electric and Telephone Cooperative Act);
20 (10) AS 10.50.408 (limited liability companies);
21 (11) AS 14.11.016 (education-related facility grants);
22 (12) AS 14.18 (discrimination in public education);
23 (13) AS 14.20.030 (teacher certificates);
24 (14) AS 14.48 (postsecondary educational institutions);
25 (15) AS 17.20 (Alaska Food, Drug, and Cosmetic Act), other than
26 AS 17.20.060 and 17.20.360;
27 (16) AS 18.18.030 (hospice licenses);
28 (17) AS 18.20 (hospitals and nursing facilities), other than
29 AS 18.20.180;
30 (18) AS 18.35.040 (tourist accommodations);
31 (19) AS 21.09, AS 21.22.190, AS 21.27, AS 21.34, AS 21.36,

- 1 AS 21.69, AS 21.86.200, AS 21.87, and AS 21.89 (insurance);
2 (20) AS 25.27 (child support enforcement);
3 (21) AS 32.06 (Uniform Partnership Act);
4 (22) AS 34.45 (unclaimed property);
5 (23) AS 34.55.024 and 34.55.026 (Uniform Land Sales Practices Act);
6 (24) AS 36.30 (State Procurement Code), other than
7 AS 36.30.627(a)(2);
8 (25) AS 38.05.065 (contracts for sale of state land);
9 (26) AS 39.52 (Alaska Executive Branch Ethics Act);
10 (27) AS 43.23 (permanent fund dividends);
11 (28) AS 43.70 (Alaska Business License Act);
12 (29) AS 44.77 (claims against the state);
13 (30) AS 45.30.040 (mobile homes);
14 (31) AS 45.55 (Alaska Securities Act);
15 (32) AS 45.57 (Takeover Bid Disclosure Act);
16 (33) AS 47.33 (assisted living homes);
17 (34) AS 47.35 (child care);
18 (35) AS 47.45 (longevity bonuses).

19 (b) An agency may request the office to conduct an administrative hearing or
20 other proceeding of that agency or to conduct several administrative hearings or other
21 proceedings under statutes not listed in (a) of this section. The office may provide the
22 service after entering into a written agreement with the agency describing the services
23 to be provided and providing for reimbursement by the agency to the office of the
24 costs incurred by the office in providing the services.

25 (c) To the extent otherwise permitted by law, the agency may delegate to the
26 administrative law judge assigned to conduct the hearing on behalf of the agency the
27 authority to make a final agency decision in the matter. The final decision may be
28 appealed to the superior court by any party.

29 (d) Nothing in this chapter may be construed to create a right to a hearing or to
30 require a hearing that is not required under other law.

31 **Sec. 44.64.040. Administrative law judges.** (a) An administrative law judge

1 must be admitted to practice law in this state and must have been admitted to practice
2 in this state for at least two years before being employed or retained with the office.
3 The chief administrative law judge shall establish additional qualifications for
4 administrative law judges employed or retained by the office and for those
5 administrative law judges that may be assigned to particular types of cases.
6 Notwithstanding AS 39.25.120(b), full-time administrative law judges employed by
7 the office are subject to the personnel rules adopted under AS 39.25.150(7), (15), and
8 (16).

9 (b) An administrative law judge employed or retained by the office may, in
10 conducting an administrative hearing for an agency, exercise the powers authorized by
11 law for exercise by that agency in the performance of its duties in connection with the
12 hearing. An administrative law judge may

13 (1) engage in alternative dispute resolution under regulations adopted
14 by the chief administrative law judge that is in addition to any alternate dispute
15 resolution procedure used by an agency before the case is referred to the office;

16 (2) order a party, a party's attorney, or another authorized
17 representative of a party to pay reasonable expenses, including attorney fees, incurred
18 by another party as a result of actions done in bad faith or as a result of tactics used
19 frivolously or solely intended to cause unnecessary delay;

20 (3) perform other necessary and appropriate acts in the performance of
21 official duties.

22 (c) An administrative law judge employed by the office must devote full time
23 to the duties of the office unless appointed to a position that is less than full-time. An
24 administrative law judge employed by the office may not perform duties inconsistent
25 with the duties and responsibilities of an administrative law judge.

26 (d) The office may enter into a contract with an individual who meets the
27 qualifications established in (a) of this section to serve as an administrative law judge
28 in a particular administrative hearing or in several hearings of the same type. The
29 individual is subject to AS 39.52 (Alaska Executive Branch Ethics Act).
30 Notwithstanding AS 36.30.015(d), the office may contract for or hire an
31 administrative law judge without notifying or securing the approval of the Department

1 of Law.

2 **Sec. 44.64.050. Hearing officer conduct.** (a) An administrative law judge
3 employed full time by the office or a hearing officer employed full time by an agency
4 may not serve in any other judicial or quasi-judicial capacity or engage in the private
5 practice of law.

6 (b) The chief administrative law judge shall, subject to AS 39.52.920 and by
7 regulation, adopt a code of hearing officer conduct. The code shall apply to the chief
8 administrative law judge, administrative law judges of the office, and hearing officers
9 of each other agency.

10 (c) Except as provided in (e) of this section, the chief administrative law judge
11 shall receive and consider all complaints against administrative law judges or hearing
12 officers employed or retained by the office or another agency alleging violations of (a)
13 of this section or of the code of hearing officer conduct. The chief administrative law
14 judge shall deliver the complaint to the attorney general when the chief administrative
15 law judge determines that the conduct alleged, if true, would constitute a violation of

16 (1) subsection (a) of this section; or

17 (2) the code and would warrant disciplinary action under the
18 regulations adopted under (b) of this section.

19 (d) If the attorney general determines that a violation has occurred, the
20 attorney general shall submit written findings to the agency that employed or retained
21 the administrative law judge or hearing officer who is the subject of the complaint
22 together with recommendations for corrective or disciplinary action. If the
23 administrative law judge is employed or retained by the office, the chief administrative
24 law judge shall take appropriate corrective or disciplinary action.

25 (e) The attorney general shall, by regulation, establish procedures to
26 implement (d) of this section, including procedures for investigating and holding
27 hearings on complaints. The attorney general shall receive and consider any
28 complaint filed against the chief administrative law judge under this section, and may
29 investigate or hold a hearing on the complaint in compliance with the regulations
30 adopted under this subsection.

31 **Sec. 44.64.055. Reimbursement agreements.** The office may enter into

1 agreements for reimbursement for services related to an administrative hearing from a
2 school district, municipality, or other governmental entity if the reimbursement is
3 authorized by other law.

4 **Sec. 44.64.060. Procedure for hearings.** (a) The chief administrative law
5 judge shall, by regulation, establish procedures for administrative hearings conducted
6 by the office. Each administrative hearing under the jurisdiction of the office or that
7 has been transferred to the office by an agency shall be conducted in accordance with
8 statutes that apply to that hearing, including, if applicable, AS 44.62 (Administrative
9 Procedure Act). In case of conflict between this section and another applicable statute
10 establishing procedures for administrative hearings, the other statute prevails.
11 However, to the extent regulations adopted by an agency for the conduct of an
12 administrative hearing conflict with regulations adopted by the chief administrative
13 law judge under this subsection, the regulations adopted by the chief administrative
14 law judge control to the maximum extent possible without conflicting with applicable
15 statutes.

16 (b) When an agency receives a request for a hearing that is subject to
17 AS 44.64.030, the agency shall, within 10 days and in writing, deny the request for
18 reasons provided by law or grant the request and refer the case to the office. The
19 agency shall immediately give notice of the denial or referral to the requestors and the
20 office. If the request is denied, the denial may be appealed to the superior court as
21 provided by other law. If the request is granted, the agency shall, within 15 days after
22 receiving the request, compile and transmit to the office a copy of the request for a
23 hearing, the names, addresses, and telephone numbers of all parties and their
24 representatives, and the agency's decision, if any, together with the record relied on to
25 support the decision. Any information provided to the office that is confidential by
26 law shall be identified by the agency as confidential and shall be kept confidential by
27 the office.

28 (c) The agency may, with materials transmitted under (b) of this section,
29 request the chief administrative law judge to permit the entity that will make the final
30 decision to participate with the assigned administrative law judge in the conduct of the
31 administrative hearing. The chief administrative law judge shall determine the degree

1 and manner of participation and may terminate that participation at any time.
2 However, the entity that participates under this subsection may not serve as the
3 administrative law judge or preside during the hearing and may not take action on
4 behalf of the agency in the agency's capacity as a party to the proceedings.

5 (d) An administrative law judge employed or retained by the office shall,
6 within 120 days after the date the agency received the request for a hearing, prepare a
7 proposed decision, unless another time period is provided by law or agreed to by the
8 parties and the chief administrative law judge. The administrative law judge shall
9 immediately submit the proposed decision to the agency.

10 (e) A proposed decision in an administrative hearing shall be in a form that
11 may be adopted as the final decision by the agency with authority to make the final
12 decision. The proposed decision is a public record, except as otherwise provided by
13 statute. A copy of the proposed decision shall be served by the office on each party in
14 the case or on the attorneys representing those parties in the hearing. Unless the office
15 has established a shorter time period or another statute has established a different time
16 period, within 30 days after the proposed decision is served, a party may file with the
17 agency a proposal for action under (1) - (5) of this subsection. The agency with
18 authority to make a final decision in the case retains agency discretion in the final
19 disposition of the case and shall, within 45 days after the date the proposed decision is
20 served or at the next regularly scheduled meeting that occurs at least 45 days after the
21 proposed decision is served, do one or more of the following:

22 (1) adopt the proposed decision as the final agency decision;

23 (2) return the case to the administrative law judge to take additional
24 evidence or make additional findings or for other specific proceedings, in which case
25 the administrative law judge shall complete the additional work and return the revised
26 proposed decision to the agency within 45 days after the original decision was
27 returned under this paragraph;

28 (3) exercise its discretion by revising the proposed enforcement action,
29 determination of best interests, order, award, remedy, sanction, penalty, or other
30 disposition of the case, and adopt the proposed decision as revised;

31 (4) in writing, reject, modify, or amend a factual finding in the

1 proposed decision by specifying the affected finding and identifying the testimony and
2 other evidence relied on by the agency for the rejection, modification, or amendment
3 of the finding, and issue a final agency decision;

4 (5) in writing, reject, modify, or amend an interpretation or application
5 in the proposed decision of a statute or regulation directly governing the agency's
6 actions by specifying the reasons for the rejection, modification, or amendment, and
7 issue a final agency decision.

8 (f) If a final decision is not issued timely in accordance with (e) of this section,
9 the administrative law judge's proposed decision is the final agency decision.

10 **Sec. 44.64.070. Disqualification of administrative law judge.** (a) The chief
11 administrative law judge or an administrative law judge employed or retained by the
12 office is disqualified from a case in which the administrative law judge cannot accord
13 a fair and impartial hearing or for other reasons established in the code of hearing
14 officer conduct.

15 (b) A party may request the disqualification of the chief administrative law
16 judge or another administrative law judge by filing an affidavit, before the taking of
17 evidence at a hearing, stating with particularity the grounds upon which it is claimed
18 that a fair and impartial hearing cannot be accorded by that administrative law judge.
19 Notwithstanding AS 44.62.450(c), upon receipt of the affidavit, the administrative law
20 judge assigned to the administrative hearing shall make a determination. If the affiant
21 objects to the decision, the matter shall be decided by the chief administrative law
22 judge, whose decision is final, or if the hearing is assigned to the chief administrative
23 law judge, by the attorney general, whose decision is final.

24 (c) In addition to disqualification of an administrative law judge under (a) and
25 (b) of this section, each side is entitled to change the assigned administrative law judge
26 once. Two or more parties aligned on the same side of an action shall be treated as
27 one side for purposes of this subsection, but the chief administrative law judge may
28 allow an additional change to a party whose interests are adverse to the interests of
29 another party on the same side. A party wishing to exercise the right to change the
30 administrative law judge shall give notice to the chief administrative law judge within
31 five days after notice is given that the case has been assigned. A party waives the

1 right to a change in the assigned administrative law judge by participating before that
2 administrative law judge in any proceeding or conference involving the case.

3 **Sec. 44.64.080. Agency cooperation.** (a) All agencies shall cooperate with
4 the chief administrative law judge and with other administrative law judges of the
5 office in the matters involving the duties of the office.

6 (b) Except as provided under AS 44.64.070 or by regulation adopted under
7 this chapter, an agency may not select or reject a particular administrative law judge
8 for assignment to an administrative hearing.

9 (c) After an administrative hearing is referred by an agency to the office for
10 hearing, the agency may not take further adjudicatory action in the case, except as a
11 party litigant or to render a final decision as provided by law. This subsection does
12 not otherwise limit the agency's authority to take action affecting a party to the case.

13 **Sec. 44.64.090. Administrative hearing records.** (a) The office shall
14 acquire and organize statistical and other information relating to administrative
15 hearings of the office and of other agencies. The office shall acquire and organize
16 copies of proposed and final agency decisions in administrative hearings and copies of
17 court decisions resulting from those administrative hearings. The information and
18 decisions shall be made available to the public, agencies, and the legislature. The
19 office shall make final agency decisions reached after administrative hearings
20 available online through an electronic data base.

21 (b) This section does not apply to records that are confidential or privileged.

22 **Sec. 44.64.095. Federal requirements.** Federal requirements applicable to an
23 administrative hearing prevail to the extent they conflict with any provision of
24 AS 44.64.010 - 44.64.200.

25 **Sec. 44.64.200. Definitions.** In this chapter,

26 (1) "administrative hearing" means a quasi-judicial hearing before an
27 agency; it does not include an informal conference or review held by an agency before
28 a final decision is issued or a rate-making proceeding or other nonadjudicative public
29 hearing;

30 (2) "administrative law judge" means a hearing officer who is retained
31 or employed by the office;

1 (3) "agency" means an agency of the executive branch of state
2 government, including an officer, a division, or another subunit of an agency, a board
3 or commission, a public corporation, and the University of Alaska;

4 (4) "hearing officer" means an individual who presides over the
5 conduct of an administrative hearing and who is retained or employed by an agency
6 for that purpose;

7 (5) "office" means the office of administrative hearings established in
8 AS 44.64.010.

9 * Sec. 4. AS 04.11.510(b) is amended to read:

10 (b) The board may review an application for the issuance, renewal, transfer of
11 location, or transfer to another person of a license without affording the applicant
12 notice or hearing, except

13 (1) if an application is denied, the notice of denial shall be furnished
14 the applicant immediately in writing stating the reason for the denial in clear and
15 concise language; the notice of denial must inform the applicant that the applicant is
16 entitled to an informal conference with either the director or the board, and that, if not
17 satisfied by the informal conference, the applicant is then entitled to a formal hearing
18 conducted by the office of administrative hearings (AS 44.64.010) [BEFORE THE
19 BOARD]; if the applicant requests a formal hearing, the office of administrative
20 hearings [BOARD] shall adhere to AS 44.62.330 - 44.62.630 (Administrative
21 Procedure Act); all interested persons may be heard at the hearing and unless waived
22 by the applicant and the board, the formal hearing shall be held in the area for which
23 the application is requested;

24 (2) the board may, on its own initiative or in response to an objection
25 or protest, hold a hearing to ascertain the reaction of the public or a local governing
26 body to an application if a hearing is not required under this subsection; the board
27 shall send notice of a hearing conducted under this paragraph 20 days in advance of
28 the hearing to each community council established within the municipality and to each
29 nonprofit community organization entitled to notification under AS 04.11.310(b);

30 (3) if a petition containing the signatures of 35 percent of the adult
31 residents having a permanent place of abode outside of but within two miles of an

1 incorporated city or an established village is filed with the board, the board shall hold
2 a public hearing on the question of whether the issuance, renewal, or transfer of the
3 license in the city or village would be in the public interest;

4 (4) if a protest to the issuance, renewal, transfer of location or transfer
5 to another person of a license made by a local governing body is based on a question
6 of law, the board shall hold a public hearing.

7 * **Sec. 5.** AS 05.20.080 is amended to read:

8 **Sec. 05.20.080. Application of Administrative Procedure Act.** The
9 procedure for review of the orders or actions of the department, its agents or
10 employees, is the same as that contained in AS 44.62 (Administrative Procedure Act).
11 Administrative hearings on contested cases shall be conducted by the office of
12 administrative hearings (AS 44.64.010).

13 * **Sec. 6.** AS 06.01.030(f) is amended to read:

14 (f) Hearings required or authorized under this title are not subject to
15 AS 44.62.330 - 44.62.630, except as required by AS 44.62.560 and 44.62.570. The
16 department shall adopt regulations, consistent with the provisions of this title,
17 establishing procedures for hearings held under this section. Administrative
18 hearings on contested cases shall be conducted by the office of administrative
19 hearings (AS 44.64.010).

20 * **Sec. 7.** AS 08.01.075(c) is amended to read:

21 (c) A board may summarily suspend a licensee from the practice of the
22 profession before a final hearing is held or during an appeal if the board finds that the
23 licensee poses a clear and immediate danger to the public health and safety. A person
24 is entitled to a hearing conducted by the office of administrative hearings
25 (AS 44.64.010) [BEFORE THE BOARD] to appeal the summary suspension within
26 seven days after the order of suspension is issued. A person may appeal an adverse
27 decision of the board on an appeal of a summary suspension to a court of competent
28 jurisdiction.

29 * **Sec. 8.** AS 08.01.087(b) is amended to read:

30 (b) If it appears to the commissioner that a person has engaged in or is about
31 to engage in an act or practice in violation of a provision of this chapter or a regulation

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adopted under it, or a provision of AS 43.70, or a provision of this title or regulation adopted under this title dealing with an occupation or board listed in AS 08.01.010, the commissioner may, if the commissioner considers it in the public interest, and after notification of a proposed order or action by telephone, telegraph, or facsimile to all board members, if a board regulates the act or practice involved, unless a majority of the members of the board object within 10 days,

(1) issue an order directing the person to stop the act or practice; however, reasonable notice of and an opportunity for a hearing must first be given to the person, except that the commissioner may issue a temporary order before a hearing is held; a temporary order remains in effect until a final order affirming, modifying, or reversing the temporary order is issued or until 15 days after the person receives the notice and has not requested a hearing by that time; a temporary order becomes final if the person to whom the notice is addressed does not request a hearing within 15 days after receiving the notice; the office of administrative hearings (AS 44.64.010) [COMMISSIONER OR THE COMMISSIONER'S DESIGNEE] shall conduct [BE THE HEARING OFFICER AT] the hearing and shall issue a proposed decision [FINAL ORDER] within 10 days after the hearing; the commissioner shall issue a final order within five days after the proposed decision is issued;

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter, a regulation adopted under it, an order issued under it, or with a provision of this title or regulation adopted under this title dealing with business licenses or an occupation or board listed in AS 08.01.010;

(3) examine or have examined the books and records of a person whose business activities require a business license or licensure by a board listed in AS 08.01.010, or whose occupation is listed in AS 08.01.010; the commissioner may require the person to pay the reasonable costs of the examination; and

(4) issue subpoenas for the attendance of witnesses, and the production of books, records, and other documents.

* Sec. 9. AS 08.11.090(c) is amended to read:

(c) The department may summarily suspend a license before final hearing or during the appeals process if the department finds that the licensee poses a clear and

1 immediate danger to the public welfare and safety if the licensee continues to practice.
2 An individual whose license is suspended under this subsection is entitled to a hearing
3 conducted by the office of administrative hearings (AS 44.64.010) not
4 [DEPARTMENT NO] later than seven days after the effective date of the order. The
5 individual may appeal the suspension after the hearing to the superior court.

6 * **Sec. 10.** AS 08.32.171(c) is amended to read:

7 (c) The board may summarily suspend the license of a licensee who refuses to
8 submit to a physical or mental examination under AS 08.36.070(b)(1). A person
9 whose license is suspended under this section is entitled to a hearing conducted by the
10 office of administrative hearings (AS 44.64.010) [BOARD] within seven days after
11 the effective date of the order. If, after a hearing, the board upholds the suspension,
12 the licensee may appeal the suspension to a court of competent jurisdiction.

13 * **Sec. 11.** AS 08.36.320(c) is amended to read:

14 (c) The board may summarily suspend the license of a licensee who refuses to
15 submit to a physical or mental examination under AS 08.36.070(b)(1). A person
16 whose license is suspended under this section is entitled to a hearing conducted by the
17 office of administrative hearings (AS 44.64.010) [BOARD] within seven days after
18 the effective date of the order. If, after a hearing, the board upholds the suspension,
19 the licensee may appeal the suspension to a court of competent jurisdiction.

20 * **Sec. 12.** AS 08.40.170(f) is amended to read:

21 (f) The department may summarily suspend a license before a final hearing is
22 held or during an appeal if the department finds that the licensee poses a clear and
23 immediate danger to the public health and safety. A person is entitled to a hearing
24 conducted by [BEFORE] the office of administrative hearings (AS 44.64.010)
25 [DEPARTMENT] to appeal the summary suspension within seven days after the order
26 of suspension is issued. A person may appeal an adverse decision of the department
27 on an appeal of a summary suspension to a court of competent jurisdiction.

28 * **Sec. 13.** AS 08.40.320(f) is amended to read:

29 (f) The department may summarily suspend a license before a final hearing is
30 held or during an appeal if the department finds that the licensee poses a clear and
31 immediate danger to the public health and safety. A person is entitled to a hearing

1 conducted by [BEFORE] the office of administrative hearings (AS 44.64.010)
2 [DEPARTMENT] to appeal the summary suspension within seven days after the order
3 of suspension is issued. A person may appeal an adverse decision of the department
4 on an appeal of a summary suspension to a court of competent jurisdiction.

5 * Sec. 14. AS 08.45.070(c) is amended to read:

6 (c) The division may summarily suspend a license before final hearing or
7 during the appeals process if the division finds that the licensee poses a clear and
8 immediate danger to the public health and safety if the licensee continues to practice.
9 A licensee whose license is suspended under this section is entitled to a hearing
10 conducted by the office of administrative hearings (AS 44.64.010) not [DIVISION
11 NO] later than seven days after the effective date of the order. The licensee may
12 appeal the suspension after a hearing to a court of competent jurisdiction.

13 * Sec. 15. AS 08.54.710(i) is amended to read:

14 (i) The department may summarily suspend a licensee from practice of the
15 profession under this chapter, for a period of not more than 30 days, before a final
16 hearing is held or during an appeal if the department finds that the licensee poses a
17 clear and immediate danger to the public health and safety. A person is entitled to a
18 hearing conducted by [BEFORE] the office of administrative hearings
19 (AS 44.64.010) [DEPARTMENT] to appeal the summary suspension within seven
20 days after the order of suspension is issued. A person may appeal an adverse decision
21 of the department on an appeal of summary suspension to a court of competent
22 jurisdiction.

23 * Sec. 16. AS 08.55.140(c) is amended to read:

24 (c) The department may summarily suspend a license before final hearing or
25 during the appeals process if the department finds that the licensee poses a clear and
26 immediate danger to the public welfare and safety if the licensee continues to practice.
27 A person whose license is suspended under this subsection is entitled to a hearing
28 conducted by the office of administrative hearings (AS 44.64.010) not
29 [DEPARTMENT NO] later than seven days after the effective date of the order. The
30 person may appeal the suspension after the hearing to the superior court.

31 * Sec. 17. AS 08.64.331(c) is amended to read:

1 (c) The board may summarily suspend a license before final hearing or during
2 the appeals process if the board finds that the licensee poses a clear and immediate
3 danger to the public health and safety if the licensee continues to practice. A person
4 whose license is suspended under this section is entitled to a hearing conducted by the
5 office of administrative hearings (AS 44.64.010) not [BOARD NO] later than seven
6 days after the effective date of the order and the person may appeal the suspension
7 after a hearing to a court of competent jurisdiction.

8 * Sec. 18. AS 08.65.120(c) is amended to read:

9 (c) The board may summarily suspend a license before final hearing or during
10 the appeals process if the board finds that the licensee poses a clear and immediate
11 danger to the public health and safety if the licensee continues to practice. A person
12 whose license is suspended under this section is entitled to a hearing conducted by the
13 office of administrative hearings (AS 44.64.010) not [BOARD NO] later than seven
14 days after the effective date of the order and the person may appeal the suspension
15 after a hearing to a court of competent jurisdiction.

16 * Sec. 19. AS 08.68.275(c) is amended to read:

17 (c) The board may summarily suspend a license before final hearing or during
18 the appeals process if the board finds that the licensee poses a clear and immediate
19 danger to the public health and safety. A person whose license is suspended under this
20 section is entitled to a hearing conducted by the office of administrative hearings
21 (AS 44.64.010) [BOARD] within seven days after the effective date of the order. If,
22 after a hearing, the board upholds the suspension, the licensee may appeal the
23 suspension to a court of competent jurisdiction.

24 * Sec. 20. AS 08.86.204(b) is amended to read:

25 (b) The board may summarily suspend the license of a licensee who refuses to
26 submit to a physical or mental examination under AS 08.86.075. A person whose
27 license is suspended under this subsection is entitled to a hearing conducted by the
28 office of administrative hearings (AS 44.64.010) [BOARD] within seven days after
29 the effective date of the order. If, after the [A] hearing, the board upholds the
30 suspension, the licensee may appeal the suspension to a court of competent
31 jurisdiction.

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* Sec. 21. AS 08.88.460(b) is amended to read:

(b) A copy of a claim filed with the commission under (a) of this section shall be sent to each real estate licensee alleged to have committed the misconduct resulting in losses, to the principal real estate broker employing a licensee alleged to have committed the conduct resulting in losses, and to any other real estate licensee involved in the transaction at least 20 days before any hearing held on the claim by the office of administrative hearings (AS 44.64.010) [COMMISSION].

* Sec. 22. AS 08.88.460(d) is amended to read:

(d) A claimant under this section shall pay a filing fee of \$250 to the commission at the time the claim is filed. The filing fee shall be refunded if the

- (1) [THE] commission makes an award to the claimant from the real estate surety fund;
- (2) [THE] claim is dismissed under (c) of this section; or
- (3) [THE] claim is withdrawn by the claimant before the office of administrative hearings (AS 44.64.010) [COMMISSION] holds a hearing on the claim.

* Sec. 23. AS 08.88.472(c) is amended to read:

(c) The commission may contract under AS 36.30 (State Procurement Code) with a person for the person to perform [HEARING AND] legal services for the commission with regard to a claim against the real estate surety fund. The contract may cover one or more claims.

* Sec. 24. AS 08.92.040(c) is amended to read:

(c) If the department determines that a person is acting as a promoter in violation of this chapter, the department may order the person to stop the violation. Upon receipt of the order, the person affected has the right to be heard and to present proof to the office of administrative hearings (AS 44.64.010) [DEPARTMENT] that the violation has not occurred. Upon [IN THE DEPARTMENT'S DISCRETION OR UPON] application made by the recipient of the order, the office of administrative hearings may [DEPARTMENT SHALL] schedule a hearing at the earliest possible time. After the hearing the department may affirm, modify, or set aside the order.

* Sec. 25. AS 10.06.633(b) is amended to read:

1 (b) A corporation may not be dissolved under this section unless the
2 commissioner has given the corporation written notice of its delinquency, failure, or
3 noncompliance by mail as provided by (i) of this section. If the corporation fails,
4 within 60 days after the requirements of (i) of this section have been satisfied, to
5 contest the alleged neglect, omission, delinquency, or noncompliance by a written
6 request for a hearing conducted by [BEFORE] the office of administrative hearings
7 (AS 44.64.010) [COMMISSIONER] or fails to correct the asserted neglect, omission,
8 delinquency, or noncompliance, it may be dissolved under (d) of this section.

9 * Sec. 26. AS 10.06.865 is amended to read:

10 **Sec. 10.06.865. Cancellation of certificates issued and filings accepted.**

11 The commissioner may, within one year after a filing, and after written notice to the
12 corporation or individual making the filing, cancel a certificate issued or filing
13 accepted under this chapter, on any ground existing at the time of issuance or filing for
14 which the commissioner could have originally refused to issue the certificate or accept
15 the filing. The notice of cancellation must state the reason for the cancellation. A
16 corporation or individual may request a hearing conducted by [BEFORE] the office
17 of administrative hearings (AS 44.64.010) [COMMISSIONER] within 90 days after
18 receipt of the notice. Cancellation becomes final if the corporation or individual does
19 not request a hearing within 90 days after receipt of notice. Notice of cancellation
20 shall be sent by certified mail with return receipt requested. If the return receipt is not
21 received by the department within a reasonable time and the department has made
22 diligent inquiry as to the address of the corporation, notice may be made by
23 publication in a newspaper of general circulation in the vicinity of the registered office
24 of the corporation or the address of the individual who made the filing, and the
25 cancellation becomes final 60 days after publication of the notice if the person or
26 corporation does not request a hearing.

27 * Sec. 27. AS 10.13.770(b) is amended to read:

28 (b) If the department fails to promptly notify the office of administrative
29 hearings (AS 44.64.010) of the application and the office fails to begin a hearing
30 within 15 business days after the application is filed or within a longer period to which
31 the licensee or subject person consents, the order shall be considered rescinded.

1 * **Sec. 28.** AS 14.11.016(b) is amended to read:

2 (b) A district may appeal an adverse decision of the department under (a) of
3 this section by filing a written notice of appeal with the commissioner within 15 days
4 after the date of the department's decision. The notice of appeal must state the legal
5 and factual basis for the appeal and the precise relief sought. The failure of the district
6 to include an issue in a notice of appeal constitutes a waiver of the right to have the
7 issue considered. Not later than 10 days after receipt by the commissioner of a notice
8 of appeal, the chief administrative law judge of the office of administrative
9 hearings (AS 44.64.010) [COMMISSIONER] shall appoint an administrative law
10 judge [A HEARING OFFICER] who is qualified under AS 44.62.350(c) to serve as
11 hearing officer and consider the appeal. If the hearing officer finds that the notice of
12 appeal does not raise a reasonable issue of fact or law, the hearing officer shall issue a
13 written decision denying the appeal. Denial of an appeal by hearing officer is a final
14 decision that may be appealed under (d) of this section. If the hearing officer finds
15 that the notice of appeal raises a reasonable issue of fact or law, the hearing officer
16 shall conduct a hearing on those issues and recommend a decision to the board. The
17 hearing officer shall issue a decision on the appeal not later than 60 days after being
18 appointed. The board shall consider the recommended decision of the hearing officer
19 at its next regularly scheduled meeting and may adopt all, part, or none of the
20 recommended decision or may remand the issue to the hearing officer for further
21 hearings. The board shall issue its decision in writing within 10 days after
22 consideration of the hearing officer's decision.

23 * **Sec. 29.** AS 14.18.090(a) is amended to read:

24 (a) The board shall enforce compliance by school districts and regional
25 educational attendance areas with the provisions of this chapter and the regulations
26 and procedures adopted under it by appropriate order made in accordance with
27 AS 44.62. After a hearing conducted by the office of administrative hearings
28 (AS 44.64.010) and a finding by the board that a district or a regional educational
29 attendance area is not in compliance with this chapter and is not actively working to
30 come into compliance, the board shall institute appropriate proceedings to abate the
31 practices found by the board to be a violation of this chapter.

1 * **Sec. 30.** AS 14.48.130(b) is amended to read:

2 (b) The commission shall investigate the complaint and may attempt to effect
3 a settlement by persuasion and conciliation. A [THE COMMISSION MAY
4 CONSIDER A] complaint may be considered after 30 days' [DAYS] written notice
5 by registered mail to the institution or agent, or both, giving notice of a time and place
6 for hearing on the complaint. The hearing shall be conducted in accordance with
7 AS 44.62 (Administrative Procedure Act) by the office of administrative hearings
8 (AS 44.64.010).

9 * **Sec. 31.** AS 18.18.030(b) is amended to read:

10 (b) The department may, without a hearing, summarily suspend a license of a
11 hospice program if it finds that the actions or deficiencies of the program have caused,
12 or present an immediate threat of causing, serious injury to a hospice program client.
13 A licensee is entitled to a hearing conducted by the office of administrative
14 hearings (AS 44.64.010) [BEFORE THE DEPARTMENT] to appeal the summary
15 suspension within seven days after the order of suspension is issued. A licensee may
16 appeal an adverse decision of the department on an appeal of a summary suspension to
17 the superior court. A summary suspension remains in effect until the department finds
18 that the actions or deficiencies are corrected, the license is revoked, or the licensee is
19 successful in appealing the suspension.

20 * **Sec. 32.** AS 18.18.030(c) is amended to read:

21 (c) The department may, without a hearing, reduce a hospice license to a
22 provisional license for a period of time established by the department if the depart: ent
23 finds that the licensee is temporarily unable to comply with 18.18.005 - 18.18.390 or
24 is in the process of becoming decertified under the Medicare program but is taking
25 appropriate steps to bring the program into compliance with 18.18.005 - 18.18.390 or
26 Medicare certification requirements. A licensee is entitled to a hearing conducted by
27 the office of administrative hearings [BEFORE THE DEPARTMENT] to appeal a
28 reduction to a provisional license under this subsection within seven days after the
29 order to reduce the license is issued. A licensee may appeal an adverse decision of the
30 department on an appeal of the order reducing the license to a provisional license to
31 the superior court. A program with a provisional license under this subsection may

1 not accept new clients. If the program fails to correct its deficiencies and does not
2 successfully appeal the order reducing the license to provisional status within the
3 period stipulated in the provisional license, the department shall revoke the license.

4 * **Sec. 33.** AS 18.60.093 is amended by adding a new subsection to read:

5 (g) After obtaining consent from the chief administrative law judge
6 (AS 44.64.020), the commission shall appoint an administrative law judge employed
7 or retained by the office of administrative hearings to preside at a hearing conducted
8 under this section. AS 44.64.060 and 44.64.070 do not apply to the hearing. The
9 administrative law judge who presided at the hearing shall be present during the
10 consideration of the case and, if requested by the commission, shall assist and advise
11 the commission. A member of the commission who has not heard all of the evidence
12 may not vote on the decision.

13 * **Sec. 34.** AS 18.67.020(f) is amended to read:

14 (f) After obtaining consent from the chief administrative law judge
15 (AS 44.64.020), the [THE] board may appoint one or more administrative law
16 judges employed or retained by the office of administrative hearings [HEARING
17 OFFICERS, WHO MUST BE LICENSED TO PRACTICE LAW IN THE STATE,]
18 to conduct hearings and take testimony in proceedings under this chapter, but final
19 determinations of any matter shall be only by the board. AS 44.64.060 and 44.64.070
20 do not apply to proceedings under this chapter. An administrative law judge [A
21 HEARING OFFICER] acting under this section shall report findings of fact and
22 conclusions of law to the board, together with the reasons for the findings and
23 conclusions. The board shall act only after consideration of the report and other
24 evidence that it considers appropriate.

25 * **Sec. 35.** AS 18.80.120 is amended by adding a new subsection to read:

26 (b) After obtaining consent from the chief administrative law judge
27 (AS 44.64.020), the commission shall appoint an administrative law judge employed
28 or retained by the office of administrative hearings to preside at a hearing conducted
29 under this section. AS 44.64.060 and 44.64.070 do not apply to the hearing. The
30 administrative law judge who presided at the hearing shall be present during the
31 consideration of the case and, if requested by the commission, shall assist and advise

1 the commission. A member of the commission who has not heard all of the evidence
2 may not vote on the decision.

3 * Sec. 36. AS 18.80.145(b) is amended to read:

4 (b) If₁ within the period allowed₁ [THE COMMISSION CONDUCTS] a
5 hearing is conducted and [REACHES] a decision is reached under AS 18.80.120 and
6 18.80.130, the decision of the commission is binding on the parties to the court action
7 as to all issues resolved in the hearing but not as to any issues not resolved in the
8 hearing.

9 * Sec. 37. AS 18.80.145(c) is amended to read:

10 (c) When proceedings in the superior court are deferred for a hearing and
11 decision [BY THE COMMISSION] under this section, the plaintiff may proceed, after
12 the decision of the commission, as an aggrieved party for the purpose of obtaining
13 judicial review under AS 18.80.135, whether or not the person was a party to, or
14 complainant in, the administrative [COMMISSION] proceedings.

15 * Sec. 38. AS 21.06.170(a) is amended to read:

16 (a) With respect to the subject of an examination, investigation, or hearing
17 being conducted by the director or an examiner, if general written authority has been
18 given the examiner by the director, the director or the examiner may subpoena
19 witnesses and administer oaths or affirmations and examine any person under oath,
20 and may compel the production of records, books, papers, contracts, and other
21 documents by attachments, if necessary. If₁ in connection with an examination of an
22 insurer₁ the director desires to examine an officer, director, or manager who is then
23 outside this state, the director is authorized to conduct and to enforce by appropriate
24 and available means an examination under oath in another state or a territory of the
25 United States in which the officer, director, or manager may then presently be, to the
26 full extent permitted by the laws of the other state or territory, this special
27 authorization considered. An administrative law judge from the office of
28 administrative hearings (AS 44.64.010) conducting a hearing under this title may,
29 in the course of the hearing, exercise the powers granted to the director under
30 this subsection.

31 * Sec. 39. AS 21.06.170(d) is amended to read:

1 (d) If a person disobeys or resists a lawful order of the administrative law
2 judge or director, refuses to respond to a subpoena, refuses to take oath or affirmation
3 as a witness, refuses to be examined, or is guilty of misconduct at a hearing or so near
4 the hearing as to obstruct the proceeding, the administrative law judge or director
5 shall certify the facts to the superior court where the hearing is held, and, upon
6 certification, the court shall issue an order directing the person to appear before the
7 court and show cause why the person should not be punished for contempt.

8 * **Sec. 40.** AS 21.06.180(b) is amended to read:

9 (b) The office of administrative hearings (AS 44.64.010) [DIRECTOR] shall
10 conduct [HOLD] a hearing on behalf of the director if required under
11 AS 44.64.030. Otherwise, the director shall conduct a hearing if required by a
12 provision of this title, or upon written demand to the director by a person aggrieved
13 by an act, threatened act, or failure of the director to act, or by a report, regulation, or
14 order of the director (other than an order for the holding of a hearing, or an order on
15 hearing or under it). A demand must specify the grounds to be relied upon at the
16 hearing as a basis for the relief. Unless postponed by mutual consent or for good
17 cause shown, the hearing shall be held within 30 days after receipt by the director of
18 the written demand.

19 * **Sec. 41.** AS 21.06.200 is amended to read:

20 **Sec. 21.06.200. Notice of hearing.** Not less than 20 days in advance, the
21 administrative law judge or director shall give notice of the time and place of the
22 hearing, stating the matters to be considered at the hearing. If the persons to be given
23 notice are not specified in the provision under which the hearing is held, the
24 administrative law judge or director shall give notice to all persons whose pecuniary
25 interests are to be directly and immediately affected by the hearing.

26 * **Sec. 42.** AS 21.06.210(a) is amended to read:

27 (a) The administrative law judge or director shall allow a party to the
28 hearing to appear in person and by counsel, to be present during the giving of all
29 evidence, to have a reasonable opportunity to inspect all documentary evidence and to
30 examine witnesses, to present evidence in support of the party's interest, and to have
31 subpoenas issued by the administrative law judge or director to compel attendance

1 of witnesses and production of evidence in the party's behalf.

2 * Sec. 43. AS 21.06.210(b) is amended to read:

3 (b) The administrative law judge or director shall permit to become a party
4 to the hearing by intervention, if timely, any person who was not an original party to
5 the proceeding and whose pecuniary interests are to be directly and immediately
6 affected by the director's order made upon the hearing.

7 * Sec. 44. AS 21.06.210(d) is amended to read:

8 (d) Upon written request seasonably made by a party to the hearing and at that
9 person's expense, the administrative law judge or director shall cause a full
10 stenographic record of the proceedings to be made by a competent reporter. If
11 transcribed, a copy of the stenographic record shall be furnished to the director,
12 without cost to the director or the state, and shall be a part of the director's record of
13 the hearing. If transcribed, a copy of the stenographic record shall be furnished to any
14 other party to the hearing at the request and expense of the other party. If no
15 stenographic record is made or transcribed, the administrative law judge or director
16 shall prepare an adequate record of the evidence and of the proceedings.

17 * Sec. 45. AS 21.06.210(f) is amended to read:

18 (f) If the parties agree, the administrative law judge or director may conduct
19 a hearing under this section by teleconference.

20 * Sec. 46. AS 21.06.210(h) is amended to read:

21 (h) The administrative law judge or director may close a hearing to the
22 public when the administrative law judge or director finds the closure is necessary to
23 protect a person against unwarranted injury or is in the public interest.

24 * Sec. 47. AS 21.06.220(a) is amended to read:

25 (a) In conducting the hearing, the administrative law judge or director shall
26 sit in a quasi-judicial capacity. Within 45 [30] days after termination of the hearing,
27 rehearing, or reargument, the director shall make an order on hearing, covering matters
28 involved in the hearing, rehearing, or reargument, and shall give a copy of the order to
29 the same persons given notice of the hearing.

30 * Sec. 48. AS 24.60.030 is amended by adding a new subsection to read:

31 (i) Except for supplying information requested by the hearing officer or the

1 entity with authority to make the final decision in the case, or when responding to
2 contacts initiated by the hearing officer or the entity with authority to make the final
3 decision in the case, a legislator or legislative employee may not attempt to influence
4 the outcome of an administrative hearing by directly or indirectly contacting or
5 attempting to contact the hearing officer assigned to the hearing or the entity with
6 authority to make the final decision in the case unless the

7 (1) contact is made in the presence of all parties to the hearing or the
8 parties' representatives and the contact is made a part of the record; or

9 (2) fact and substance of the contact is promptly disclosed by the
10 legislator or legislative employee to all parties to the hearing and the contact is made a
11 part of the record.

12 * Sec. 49. AS 34.45.400(c) is amended to read:

13 (c) At the formal hearing, the administrative law judge from the office of
14 administrative hearings (AS 44.64.010) [DEPARTMENT] may subpoena witnesses
15 and may administer oaths and make inquiries necessary to determine the validity of
16 the claim. The person aggrieved may present arguments and evidence relevant to the
17 decision or action of the department. If, after the hearing, the department determines
18 that a correction is warranted, the department shall make the correction.

19 * Sec. 50. AS 36.30.015(d) is amended to read:

20 (d) An agency may not contract for the services of legal counsel without the
21 approval of the attorney general. An agency may not contract for the services of a
22 hearing officer or administrative law judge for a administrative, quasi-judicial
23 hearing without the approval of the attorney general and the chief administrative
24 law judge of the office of administrative hearings (AS 44.64.010).

25 * Sec. 51. AS 36.30.615 is amended to read:

26 Sec. 36.30.615. Hearing on protest appeal. A hearing on a protest appeal
27 shall be conducted in accordance with AS 36.30.670 and regulations adopted by the
28 commissioner to the extent the regulations do not conflict with regulations
29 adopted under AS 44.64.060.

30 * Sec. 52. AS 36.30.630(a) is amended to read:

31 (a) Except as provided in (b) of this section, a hearing shall be conducted

1 according to AS 36.30.670 and, to the extent they do not conflict with regulations
2 adopted under AS 44.64.060, regulations adopted by the commissioner of
3 administration on a contract claim appealed to the commissioner of administration or
4 the commissioner of transportation and public facilities or referred to either
5 commissioner under AS 36.30.620(f).

6 * Sec. 53. AS 36.30.635(a) is amended to read:

7 (a) After consultation with the using agency and the attorney general and after
8 a hearing conducted according to AS 36.30.670 and, to the extent they do not
9 conflict with regulations adopted under AS 44.64.060, regulations adopted by the
10 commissioner of administration, the commissioner of administration or the
11 commissioner of transportation and public facilities may debar a person for cause from
12 consideration for award of contracts. Notice of a debarment hearing shall be provided
13 in writing at least seven days before the hearing. The debarment may not be for a
14 period of more than three years.

15 * Sec. 54. AS 36.30.650 is amended to read:

16 Sec. 36.30.650. Hearing on a suspension. (a) A person suspended under
17 AS 36.30.635 is entitled to a hearing conducted according to AS 36.30.670 and, to the
18 extent that they do not conflict with regulations adopted under AS 44.64.060,
19 regulations adopted by the commissioner of administration if the person files a written
20 request for a hearing with the commissioner of administration or the commissioner of
21 transportation and public facilities, as appropriate, within seven days after receipt of
22 the notice of suspension under AS 36.30.645.

23 (b) If a suspended person requests a hearing, the commissioner of
24 administration or the commissioner of transportation and public facilities, as
25 appropriate, after consulting with the office of administrative hearings
26 (AS 44.64.010), shall schedule a prompt hearing unless the attorney general
27 determines that a hearing at the proposed time is likely to jeopardize an investigation.
28 A hearing may not be delayed longer than six months after notice of the suspension is
29 provided under AS 36.30.645.

30 * Sec. 55. AS 36.30.670(a) is amended to read:

31 (a) The chief administrative law judge (AS 44.64.010) [COMMISSIONER

1 OF ADMINISTRATION OR THE COMMISSICNER OF TRANSPORTATION
2 AND PUBLIC FACILITIES] shall assign an administrative law judge to act as a
3 hearing officer [OR APPOINT A HEARING OFFICER] for a hearing conducted
4 under this chapter. The hearing officer shall arrange for a prompt hearing and notify
5 the parties in writing of the time and place of the hearing. The hearing shall be
6 conducted in an informal manner. The provisions of AS 44.62 (Administrative
7 Procedure Act) do not apply to a hearing conducted under this chapter.

8 * Sec. 56. AS 36.30.675(a) is amended to read:

9 (a) The [IF THE COMMISSIONER OF ADMINISTRATION OR THE
10 COMMISSIONER OF TRANSPORTATION AND PUBLIC FACILITIES IS NOT
11 ACTING AS HEARING OFFICER, THE] hearing officer shall recommend a decision
12 to the commissioner of administration or the commissioner of transportation and
13 public facilities, as appropriate, based on the evidence presented. The
14 recommendation must include findings of fact and conclusions of law.

15 * Sec. 57. AS 39.52.120 is amended by adding a new subsection to read:

16 (e) Except for supplying information requested by the hearing officer or the
17 entity with authority to make the final decision in the case, or when responding to
18 contacts initiated by the hearing officer or the entity with authority to make the final
19 decision in the case, a public officer may not attempt to influence the outcome of an
20 administrative hearing by directly or indirectly contacting or attempting to contact the
21 hearing officer or entity with authority to make the final decision in the case assigned
22 to the hearing unless the

23 (1) contact is made in the presence of all parties to the hearing or the
24 parties' representatives and the contact is made a part of the record; or

25 (2) fact and substance of the contact is promptly disclosed by the
26 public officer to all parties to the hearing and the contact is made a part of the record.

27 * Sec. 58. AS 39.52.350(c) is amended to read:

28 (c) If the subject of the accusation denies that a violation of this chapter has
29 occurred, the attorney general shall refer the matter to the personnel board, which
30 shall notify the chief administrative law judge (AS 44.64.010), who shall appoint
31 an administrative law judge to serve as a hearing officer to conduct a hearing.

1 * **Sec. 59.** AS 43.05.420 is amended by adding a new subsection to read:

2 (d) If there is a vacancy in the office of chief administrative law judge, the
3 commissioner may refer a case to a hearing officer for a hearing under AS 43.05.400 -
4 43.05.499.

5 * **Sec. 60.** AS 43.05.420(d) is repealed and reenacted to read:

6 (d) If there is a vacancy in the office of chief administrative law judge, the
7 commissioner may refer a case to the office of administrative hearings (AS 44.64.010)
8 and request that office to conduct the hearing. Once referred, the office shall have
9 jurisdiction over the case until the final administrative decision is made.
10 AS 43.05.435 - 43.05.499 apply to a hearing conducted by the office under this
11 subsection.

12 * **Sec. 61.** AS 43.70.075(m) is amended to read:

13 (m) The department may initiate suspension of a business license endorsement
14 or the right to obtain a business license endorsement under this section by sending the
15 person subject to the suspension a notice by certified mail, return receipt requested, or
16 by delivering the notice to the person. The notice must contain information that
17 informs the person of the grounds for suspension, the length of any suspension sought,
18 and the person's right to administrative review [BEFORE THE DEPARTMENT]. A
19 suspension begins 30 days after receipt of notice described in this subsection unless
20 the person delivers a timely written request for a hearing to the department in the
21 manner provided by regulations of the department. If a hearing is requested under this
22 subsection, a hearing officer of the office of administrative hearings (AS 44.64.010)
23 [DEPARTMENT] shall determine the issues by using the preponderance of the
24 evidence test and shall, to the extent they do not conflict with regulations adopted
25 under AS 44.64.060, conduct the hearing in the manner provided by regulations of the
26 department. A hearing under this subsection is limited to the following questions:

27 (1) was the person holding the business license endorsement, or an
28 agent or employee of the person while acting within the scope of the agency or
29 employment of the person, convicted by plea or judicial finding of violating
30 AS 11.76.100, 11.76.106, or 11.76.107;

31 (2) if the department does not allege a conviction of AS 11.76.100,

1 11.76.106, or 11.76.107, did the person, or an agent or employee of the person while
2 acting within the scope of the agency or employment of the person, violate a provision
3 of (a) or (g) of this section;

4 (3) within the 24 months before the date of the department's notice
5 under this subsection, was the person, or an agent or employee of the person while
6 acting within the scope of the agency or employment of the person, convicted of
7 violating AS 11.76.100, 11.75.106, or 11.76.107 or adjudicated for violating a
8 provision of (a) or (g) of this section.

9 * Sec. 62. AS 43.70.075(q) is amended to read:

10 (q) The department may adopt regulations that do not conflict with
11 regulations adopted under AS 44.64.010 to establish an administrative hearing
12 process for actions taken [BY THE DEPARTMENT] under this section. AS 44.62
13 (Administrative Procedure Act) does not apply to a hearing under this section.

14 * Sec. 63. AS 44.62.350(a) is amended to read:

15 (a) The governor shall assign a qualified, unbiased, and impartial hearing
16 officer, with experience in the general practice of law, to conduct hearings under this
17 chapter that are not conducted by the office of administrative hearings
18 (AS 44.64.010). A [. THE] hearing officer may perform other duties in connection
19 with the administration of this chapter and other laws.

20 * Sec. 64. AS 44.62.450(a) is amended to read:

21 (a) A hearing in a contested case shall be presided over by a hearing officer.
22 Unless the hearing is conducted by the office of administrative hearings
23 (AS 44.64.010), the [THE] agency itself shall determine whether the hearing officer
24 hears the case alone or whether the agency hears the case with the hearing officer.

25 * Sec. 65. AS 44.62.500(b) is amended to read:

26 (b) If a contested case is heard by a hearing officer alone, the hearing officer
27 shall prepare a proposed decision in a form that may be adopted as the decision in the
28 case. A copy of the proposed decision shall be filed by the agency as a public record
29 with the lieutenant governor, and a copy of the proposed decision shall be served by
30 the agency on each party in the case and the party's attorney. Except as otherwise
31 provided in AS 44.64.060(e), for a hearing conducted by the office of

1 administrative hearings, the [THE] agency itself may adopt the proposed decision in
2 its entirety, or may reduce the proposed penalty and adopt the balance of the proposed
3 decision.

4 * **Sec. 66.** AS 44.62.500(c) is amended to read:

5 (c) If the proposed decision is not adopted as provided in (b) of this section the
6 agency may decide the case upon the record, including the transcript, with or without
7 taking additional evidence, or may refer the case to the same or another hearing officer
8 to take additional evidence. If the case is so assigned the hearing officer shall prepare
9 a proposed decision as provided in (b) of this section upon the additional evidence and
10 the transcript and other papers that are part of the record of the earlier hearing. A copy
11 of the proposed decision shall be furnished to each party and the party's attorney as
12 prescribed by (b) of this section. The agency may not decide a case provided for in
13 this subsection without giving the parties the opportunity to present either oral or
14 written argument before the agency. If additional oral evidence is introduced before
15 the agency, an agency member may not vote unless that member has heard the
16 additional oral evidence. This subsection does not apply to a hearing conducted by
17 the office of administrative hearings.

18 * **Sec. 67.** AS 44.64.030(a), added by sec. 3 of this Act, is amended to read:

19 (a) The office shall conduct all adjudicative administrative hearings required
20 under the following statutes or under regulations adopted to implement the statutes:

- 21 (1) AS 04.11.510(b)(1) and (c) (alcoholic beverages license);
22 (2) AS 05.15 (charitable gaming);
23 (3) AS 05.20 (recreational devices);
24 (4) AS 05.90.001 (special racing events);
25 (5) AS 06 (banks and financial institutions);
26 (6) AS 08 (occupational licensing), other than AS 08.08 and
27 AS 08.62.046;
28 (7) AS 10.06 (Alaska Corporations Code);
29 (8) AS 10.13 (Alaska BIDCO Act);
30 (9) AS 10.25.375 (Electric and Telephone Cooperative Act);
31 (10) AS 10.50.408 (limited liability companies);

- 1 (11) AS 14.11.016 (education-related facility grants);
2 (12) AS 14.18 (discrimination in public education);
3 (13) AS 14.20.030 (teacher certificates);
4 (14) AS 14.48 (postsecondary educational institutions);
5 (15) AS 17.20 (Alaska Food, Drug, and Cosmetic Act), other than
6 AS 17.20.060 and 17.20.360;
7 (16) AS 18.18.030 (hospice licenses);
8 (17) AS 18.20 (hospitals and nursing facilities), other than
9 AS 18.20.180;
10 (18) AS 18.35.040 (tourist accommodations);
11 (19) AS 21.09, AS 21.22.190, AS 21.27, AS 21.34, AS 21.36,
12 AS 21.69, AS 21.86.200, AS 21.87, and AS 21.89 (insurance);
13 (20) AS 25.27 (child support enforcement);
14 (21) AS 32.06 (Uniform Partnership Act);
15 (22) AS 34.45 (unclaimed property);
16 (23) AS 34.55.024 and 34.55.026 (Uniform Land Sales Practices Act);
17 (24) AS 36.30 (State Procurement Code), other than
18 AS 36.30.627(a)(2);
19 (25) AS 38.05.065 (contracts for sale of state land);
20 (26) AS 39.52 (Alaska Executive Branch Ethics Act);
21 (27) AS 43.23 (permanent fund dividends);
22 (28) AS 43.70 (Alaska Business License Act);
23 (29) AS 44.77 (claims against the state);
24 (30) AS 45.30.040 (mobile homes);
25 (31) AS 45.55 (Alaska Securities Act);
26 (32) AS 45.57 (Takeover Bid Disclosure Act);
27 (33) AS 46 (water, air, energy, and environmental conservation),
28 other than AS 46.03.820, 46.03.850, AS 46.39, and AS 46.40;
29 (34) AS 47.33 (assisted living homes);
30 (35) [(34)] AS 47.35 (child care);
31 (36) [(35)] AS 47.45 (longevity bonuses).

1 * Sec. 68. AS 44.77.040(a) is amended to read:

2 (a) The Department of Administration, after consulting with the office of
3 administrative hearings (AS 44.64.010), shall fix a time for hearing the appeal and
4 shall notify the claimant and the officer who approved the voucher and give them a
5 reasonable opportunity to be heard. The hearing shall be conducted by the office of
6 administrative hearings.

7 * Sec. 69. AS 45.30.040(c) is amended to read:

8 (c) Whenever it determines that there may be a violation of the provisions of
9 this chapter by a manufacturer or dealer of mobile homes, the department may give
10 notice of hearing, and, within 30 days after giving notice, [HOLD] a hearing shall be
11 held by the office of administrative hearings (AS 44.64.010) to determine whether
12 there has been a violation. After notice and hearing,

13 (1) if the department finds that there has been a violation of the
14 provisions of this chapter, the department may issue an order directing that the person
15 who is violating the provision cure the violation in a reasonable time and in a
16 reasonable manner;

17 (2) if the department determines that violations of the provisions of
18 this chapter are regular and recurring, it may require forfeiture of the bond to the
19 benefit of the state and arrange for distribution of the proceeds of the bond to the
20 mobile home owners injured by the activities of the dealer or manufacturer, or to
21 mobile home dealers injured by the activities of the manufacturer.

22 * Sec. 70. AS 45.55.935 is amended to read:

23 **Sec. 45.55.935. Hearings.** (a) The administrator shall adopt regulations,
24 consistent with the provisions of this chapter and with regulations adopted under
25 AS 44.64.060, governing administrative hearings conducted by the office of
26 administrative hearings (AS 44.64.010) [ADMINISTRATOR OR A DESIGNEE OF
27 THE ADMINISTRATOR] for the following:

28 (1) orders issued under AS 45.55.120, 45.55.900(d), or 45.55.920; in
29 these instances, the administrator shall promptly send a notice of opportunity for
30 hearing to the issuer of the securities and to all persons who have filed with the
31 department a notice of intention to sell the securities; and

1 (2) orders issued under AS 45.55.060; before the administrator enters
2 an order under AS 45.55.060, the administrator shall send to the person involved a
3 notice of opportunity for hearing; if the person involved is an agent or investment
4 adviser representative, then the administrator shall, in addition, notify the employing
5 broker-dealer, state investment adviser, federal covered adviser, or issuer.

6 (b) In conducting a hearing in accordance with (a) of this section, the
7 administrative law judge [ADMINISTRATOR] may issue a subpoena to compel the
8 attendance of any witness or party and to compel production of evidence.

9 * Sec. 71. AS 45.55.950(e) is amended to read:

10 (e) Every hearing in an administrative proceeding shall be public unless the
11 administrative law judge, [ADMINISTRATOR] in the exercise of discretion, grants
12 a request joined in by all the respondents that the hearing be conducted privately.

13 * Sec. 72. AS 45.57.020(a) is amended to read:

14 (a) An offeror may not make a takeover bid unless at least 20 days before the
15 bid the offeror files with the department and with the registered agent of the offeree
16 company a statement containing all the information required by (c) of this section and
17 either

18 (1) within 10 days following the filing no hearing has been ordered by
19 the department or requested by the offeree company; or

20 (2) a hearing has been ordered within that time and, after [UPON] the
21 hearing conducted by the office of administrative hearings (AS 44.64.010), the
22 department has decided [ADJUDICATED] that the offeror proposed to make fair,
23 full, and effective disclosure to offerees of all information material to a decision to
24 accept or reject the offer.

25 * Sec. 73. AS 45.57.020(b) is amended to read:

26 (b) A hearing shall begin within 20 days of the date of filing of the statement,
27 and adjudication shall be made within 30 days of the filing unless extended by the
28 administrative law judge [DEPARTMENT] for the convenience of the parties or
29 protection of the offerees.

30 * Sec. 74. AS 46.15.065(c) is amended to read:

31 (c) The commissioner shall make investigations as necessary of rights asserted

1 by declarations filed under this section and shall determine each existing appropriation
2 and mail a summary of the determination to each person who has filed a declaration
3 with respect to the specified area or source. Any person adversely affected by a
4 determination may file with the commissioner a request for a hearing within 20 days
5 of the date the notice is mailed. If a hearing is requested, the commissioner shall,
6 after consulting with the office of administrative hearings (AS 44.64.010), send a
7 notice of the time and place of the hearing to each person who has filed a declaration.

8 * **Sec. 75.** AS 47.45.050 is amended to read:

9 **Sec. 47.45.050. Department hearing.** The Department of Health and Social
10 Services may arrange with the office of administrative hearings (AS 44.64.010) to
11 hold a [DEPARTMENTAL] hearing upon the request of an applicant or recipient who
12 has been disqualified. Before this hearing the department shall by certified mail notify
13 an applicant or recipient in plain and comprehensive language the exact reason for the
14 disqualification. Form letters using only referral to state statutes or department
15 regulations, or otherwise vague in detail, are not considered compliance by the
16 department with this section.

17 * **Sec. 76.** The uncodified law of the State of Alaska is amended by adding a new section to
18 read:

19 APPLICABILITY. (a) Sections 1 - 58, 60 - 66, 68 - 73, and 75 of this Act apply to
20 administrative proceedings that begin on or after July 1, 2005.

21 (b) Sections 67 and 74 of this Act apply to administrative proceedings that begin on
22 or after July 1, 2007.

23 * **Sec. 77.** The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

25 REGULATIONS. The chief administrative law judge and any agency affected by this
26 Act may proceed to adopt regulations to implement this Act. A regulation adopted under this
27 section takes effect under AS 44.62 (Administrative Procedure Act) but not before the
28 effective date of the law implemented by the regulation.

29 * **Sec. 78.** The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 TRANSITION. (a) Litigation, hearings, investigations, and other proceedings

1 pending under a law amended or repealed by this Act, or in connection with functions
2 transferred by this Act, continue in effect and may be continued and completed,
3 notwithstanding a transfer, amendment, or repeal provided for in this Act.

4 (b) Certificates, orders, and regulations issued or adopted under authority of a law
5 amended or repealed by this Act remain in effect for the term issued, or until revoked,
6 vacated, or otherwise modified under the provisions of this Act.

7 (c) Contracts, rights, liabilities, and obligations created by or under a law amended or
8 repealed on July 1, 2005, by this Act and in effect on July 1, 2005, remain in effect.
9 Contracts, rights, liabilities, and obligations created by or under a law amended or repealed on
10 July 1, 2007, by this Act and in effect on July 1, 2007, remain in effect.

11 (d) Upon the initial appointment of the chief administrative law judge under
12 AS 44.64.010(c), added by sec. 2 of this Act, the chief administrative law judge and the
13 commissioner of administration, the commissioner of community and economic development,
14 the commissioner of revenue, and the governor's office shall identify administrative law
15 judges and support staff to be transferred to the office of administrative hearings on or after
16 January 1, 2005. A state employee who is transferred under this section from another agency
17 to the office of administrative hearings shall continue to be compensated at the same range
18 and step of the salary schedule in AS 39.27.011(a) that the employee was receiving before the
19 transfer, and qualifies for salary increases authorized under AS 39.27.011 and 39.27.022.

20 (e) Procedural regulations of an agency that refers an administrative hearing to the
21 office of administrative hearings shall apply to the hearing until regulations adopted under
22 AS 44.64.060(a), added by sec. 3 of this Act, become effective.

23 * **Sec. 79.** Sections 1, 2, 59, 77, and 78 of this Act take effect immediately under
24 AS 01.10.070(c).

25 * **Sec. 80.** Sections 67 and 74 of this Act take effect July 1, 2007.

26 * **Sec. 81.** Except as provided in secs. 79 and 80 of this Act, this Act takes effect July 1,
27 2005.

March 18, 2004

To: House Judiciary Committee

From: David A. Ingram

Comments on SB 203

My name is David A. Ingram. I retired from state service on February 1, 2004, after working for more than 23 years as a hearing officer for the Commercial Fisheries Entry Commission. On February 6, I testified on this bill before the Senate Judiciary Committee and supplied written materials to supplement my testimony. Thank you for the opportunity to appear before the House Judiciary Committee.

As I testified previously, I fully support the general thrust of SB 203. Anything that helps produce a more professional corps of administrative adjudicators, and is affordable, is a good idea. I believe the creation of a central panel of administrative law judges (ALJs) is essential, and I look forward to the day when all hearing officers are removed from agency supervision and control.

I believe a central panel is essential because:

1. The appearance of fairness is greatly enhanced when the adjudicator is not employed by and under the control and supervision of the agency. How would the public feel if the state's general jurisdiction judges were employed by and under the control and supervision of the Department of Law?
2. ALJs and hearing officers are only human. They form friendships with agency personnel who appear before them as witnesses and whose actions they are frequently judging. Those friendships are bound to affect their decisions, no matter how hard they try to avoid it. The public is ill-served when the agency's adjudications are "all in the family."
3. ALJs and hearing officers should be free to expose misdeeds and corrupt practices by agency personnel without fear of retribution. As long as the ALJs and hearing officers are under the control and supervision of the agency, and thus subject to retribution in any number of ways, including adverse performance evaluation reports, denial of pay increases, and demotions, they will be loathe to expose agency actions that should be brought to the public's attention.

I have reviewed the latest committee substitute for SB 203. I'd like to offer the following suggestion for your consideration.

Strengthen the language in Section 1 of the bill (regarding the purpose of the act and the legislature's intent) to include respect for an individual's privacy and to prohibit actions that threaten, intimidate, or harass a member of the public.

I am attaching hereto several pages from a decision I issued on January 30, 2004, in Thomas, CFEC 01-010-A, that discussed a message a hearing officer for the Commercial Fisheries Entry Commission left on the telephone answering machine of a member of the public (the hearing officer, Jim Bowen, was acting as a state's representative at the time). I found that the message violated the individual's right to privacy and that it was, if not threatening, at least intimidating and harassing. While I am very encouraged by the existing language in Section 1 of the bill calling for high quality adjudications, respect for the dignity of individuals, fairness, protection of rights, and protection of the integrity of the process, I recommend that language be added to strengthen the protections afforded the public and to further clarify the legislature's intent. It could be done by adding language and making changes to the relevant portion of Section 1 as follows:

- (2) ensure respect for the privacy and dignity of the individuals whose cases are being adjudicated [;] and protect them from threats, intimidation, and harassment;

Again, thank you for the opportunity to submit comments on this very important bill.

Extract (pages 50-53) from Thomas, CFEC 01-010-A (Hearing Officer decision dated January 30, 2004)

More troubling, but equally lacking as proof of a conspiracy, is the message Mr. Bowen left on Mr. Thomas's home answering machine on Thursday, September 12, 2001. When Mr. Thomas did not contact him regarding Mr. Bowen's motion for a prehearing conference, Mr. Bowen called him and left the following message:

Yeah, Scott, this is Jim Bowen, and it's three o'clock on Thursday. I don't have time to mess around waiting for you to.... Apparently, you decided not to cooperate with me, so that's it. I mean, things are going to get difficult from here on out. You can count on that. It's going to be a broad brush that I paint with. Certainly a very fair and thorough ___icitation [solicitation?] of justice.

Mr. Thomas regarded the message as a threat and points to it as further evidence of a conspiracy against him. While the message might be construed as an implied threat (falling, perhaps, in the category of threats that pose as an assurance and which frequently contain the disclaimer "This isn't a threat. It's a promise."), it's more properly viewed as a statement of intimidation and harassment.

To fully appreciate the nature of the message, it must be put in context. This is not a case in which the Commission accused Mr. Thomas of wrongdoing and assumed the burden of proving he submitted false evidence. It initiated the case as an administrative hearing on an application, putting the burden of proof on Mr. Thomas to prove his entitlement to the permit sought. Mr. Thomas complained to the hearing officer, however, that Mr. Bowen had repeatedly called him in the early stages of these proceedings trying to get him to admit to the falsity of his claim, telling him that he was being investigated for fraud, and raising the specter of a criminal conviction and jail time, all of which caused him to hire an attorney to get Mr. Bowen off his back. There being no tape recording of those conversations, the precise language used by Mr. Bowen is unknown, but it's noteworthy that Mr. Thomas told one witness at hearing that someone

may go to jail over all this and advised another that Mr. Bowen told him he was being investigated for fraud. Even without knowledge as to those matters, however, it doesn't take a rocket scientist to divine what Mr. Bowen was saying in the tape-recorded message, especially if one listens to his tone of voice on the tape recording. Although he chose to speak in weasel words, Mr. Bowen was conveying the message that, because Mr. Thomas failed to "cooperate" with him, there was going to be trouble ("things" were going to "get difficult"); that there was going to be a lot of trouble (painting with a "broad brush"); that it was Mr. Thomas, not anyone else, who was going to have those troubles; and that it was Mr. Bowen ("I" will do the painting) who was going to make sure that Mr. Thomas had those troubles ("count on that").

The subtext to Mr. Bowen's message is as follows: ("Apparently, you decided not to cooperate with me, so that's it.") You've lost your chance for any favorable treatment. ("I mean, things are going to get difficult from here on out.") You're going to have a lot of trouble from here on out. ("You can count on that.") I promise you that you're going to have a lot of trouble from here on out. ("It's going to be a broad brush that I paint with.") I'm going to make trouble for you every way I can. ("Certainly a very fair and thorough ___ icitation of justice.") I'm going to get you, but I'll be fair in doing it.

What makes this intimidating and harassing message even more outrageous than it appears on its face is the fact that Mr. Thomas had not opposed Mr. Bowen's request for a prehearing conference. The message was delivered out of personal pique. Mr. Thomas didn't do what Mr. Bowen wanted, so he called and left the message. There was no legitimate government business being conducted. A legitimate call in the context of these proceedings would have been in the nature of something like this: "Mr. Thomas, this is Jim Bowen. I need to know whether you're going to cooperate with me. Please call me as soon as possible." A conscientious public servant doesn't offend a member of the public by telling him that he doesn't have time to "mess around" waiting for him and certainly doesn't leave intimidating and harassing messages on his answering machine.

To make matters worse, Mr. Bowen invoked the power of the government against Mr. Thomas. His mention of the "broad brush" he was going to use and "justice" were clearly meant to convey the message that it was the State of Alaska that was going to make trouble for him, not Mr. Bowen acting in a purely personal capacity. Such arrogance of power, and abuse of power, is unconscionable. The Alaska Supreme Court has held that article 1, section 1 of the Alaska Constitution gives Alaskans the right to be let alone. In doing so, it quoted the United States Supreme Court as follows:

No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law. As well said by Judge Cooley, 'The right to one's person may be said to be a right of complete immunity: to be let alone.'

Another provision of the Alaska Constitution, article 1, section 22, gives Alaskans what is probably the strongest right of privacy in the United States. In explaining where that right of privacy is the strongest, the Court held as follows: "If there is any area of human activity to which a right to privacy pertains more than any other, it is the home." Here, Mr. Bowen invaded Mr. Thomas's home, and his privacy, with a message of intimidation and harassment.

Further aggravating Mr. Bowen's act is the fact that he was so ill-informed at the time he did it. The case he was preparing against Mr. Thomas, that he made false landings on October 6, 1995, was a fiction, and the allegation that he made a false landing on October 28, 1996, was so ill-prepared as to be laughable. The Commission appointed him to represent the state in this matter because it felt that an investigation needed to be performed. It did not get what it bargained for. Mr. Bowen obviously did not do essential investigation of the case. He didn't look at (or understand) relevant fish tickets. He didn't gather essential information from processors, banks, and other witnesses who had information to offer that conflicted with his misguided theory. As a result, the resources of both the state and Mr. Thomas were essentially wasted throughout

the hearing that took place June 7-15, 2001. The hearing officer let the opposing parties try their own cases and did not undertake to develop the record for them, which was in accord with a ruling by the Alaska Supreme Court to the effect that CFEC hearing officers do not have an affirmative duty to develop the record. The hearing officer believed that was especially true if both sides were represented. The Commission nevertheless faulted the hearing officer for failing to develop the record in June of 2001 and ordered that he do so on remand. The hearing officer took over and gathered all evidence that was accumulated following the remand. Mr. Bowen produced no evidence whatsoever from the time of remand until he withdrew from the case on September 17, 2001. As the record of these proceedings since the remand amply demonstrates, diligent, purposeful work, coupled with polite and courteous treatment of the public, is not ineffective in getting at the truth.

While any number of words come to mind when one tries to describe the message Mr. Bowen left on Mr. Thomas's answering machine, perhaps it's best described as ill-advised, foolish, and lacking in professionalism. Mr. Bowen is an employee of the Commercial Fisheries Entry Commission and was acting as a representative of the State of Alaska when he made that call to a member of the public. Mr. Thomas is not charged with any wrongdoing and is not responding to any allegation of wrongdoing. He is merely a person who is trying to prove his entitlement to an entry permit in an administrative proceeding. He, like every member of the public, is entitled to be treated with courtesy and respect, not intimidation and harassment. Mr. Bowen's heavy-handed actions did not comport with the standards of conduct expected of public employees, and they bring discredit upon himself, the Commission, and the State of Alaska.

ALASKA STATE LEGISLATURE

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Senate
Senate District F

Memorandum

To: Representative Lesil McGuire / House Judiciary Chair

From: Senator Gene Therriault / Administrative Regulation Review Chair

Date: March 6, 2004

Re: SB 203

DAVE - 3444

I wanted to get a request for a hearing in as early as possible on SB 203 so your committee could begin deliberations. This is a very intricate bill from both a technical and procedural standpoint. Your tenure in Reg. Review is very fortuitous in this regard.

Our drafter Tam Cook continues with technical clean up, and the final negotiations with the administration on this bill are coming to a close. Unless you dictate otherwise, I will direct my staff to bring those final changes to you in the form of a blank CS.

As with any major government reform bill SB 203 has involved hundreds of hours of careful and somewhat delicate negotiations with the administration. The goal is to achieve affordable, meaningful reform throughout the state administrative hearing process. To do this we have constructed a moderately sized central hearing office that will easily receive additional jurisdictions in the future. We have tried to balance the concerns of agencies with the need to change the way the executive conducts administrative hearings. Under the present agency controlled system, no matter how unbiased it might be, the public perception is that it is prejudicial and unfair.

The challenge in SB 203 has been, and will remain for all of us who want to see this reform happen, to keep the negotiated balance within the bill in tact. I look forward in working with you and am available for any questions as you deliberate on SB 203.

ALASKA STATE LEGISLATURE

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Senate
Senate District F

Sponsor Statement SB 203

Fair Hearing Bill

Senate Bill 203 is a culmination of many years of effort to achieve a more efficient, timely, and fairer administrative hearing process. The purpose of this legislation is to separate the administration adjudication process away from the agencies that write, promulgate and enforce administrative law. As the separation occurs opportunities to create an efficient and more professional administrative hearing process in a central panel will be realized. It is through these efficiencies that any initial start-up costs are soon negated, and significant savings accrue over time. Of course the reductions in time and expense to citizens and businesses, though never reflected in fiscal notes, are equally important components in this major reform.

Instead of allowing hearing officers to be typical employees and extensions of the agencies whose administrative law they adjudicate, SB 203 is designed to give these administrative adjudicators a more independent and protected station from which to deliver timely due process through fair and objective hearings. This is accomplished through the creation of a model central independent hearing office, and the application of protections and new rules for all hearing officers in and out of that office.

As tempting as an all-encompassing reform might through placing all hearing officers and functions within a central office, two critical obstacles have caused us to move in a more incremental approach. The first is a commitment to keep costs down. The second is sensitivity to both employees and administrators who will be involved in the reform. The model central office created in this bill will over time incorporate more hearing functions and officers. In the interim it will provide resources and training and alternative dispute resolution for all state hearing officers.

The primary objectives of this act are to insure better quality, less costly, less time consuming, and fairer administrative hearings. Achieving these goals will not only be beneficial to our constituents, but good for business, and government as well. Creation of independent hearing offices in other states has enjoyed bi-partisan support. I look forward to the same as SB 203 proceeds through our legislative process.

An Act establishing an Independent Office of Administrative Hearings.

SB 203 (Fin) am

Section By Section Quick Reference

- Section 1.** Purpose and intent
- Section 2.** 44.21.510 Establishes location of independent office of administrative hearings and qualifications and compensation of Chief Administrative Law Judge.
- 44.21.520 Powers and duties of Chief ALJ.
- Section 3.** 44.21.530 Administrative hearing functions to be included in the new independent office. Provisions of service and delegation of decision authority.
- 44.21.540 ALJ qualifications and duties. Authority for Chief ALJ officer to enter into contracts with qualified individuals to serve as ALJ.
- 44.21.550 Code of conduct for hearing officers.
- 44.21.555 Reimbursement agreements
- 44.21.560 Establishment of procedures for administrative hearings, including time limits, decision authority, and rules for altering an ALJ decision.
- 44.21.570 Disqualification of an ALJ.
- 44.21.580 Agency cooperation with ALJ's. Selection of ALJ's. No agency interference.
- 44.21.590 Administrative hearing records. Record keeping requirements.
- 44.21.595 Federal requirement resolutions of conflict with federal law.
- 44.21.599 Definitions

Sections 4 – 53	Conforming technical amendments to affected statutes.
Section 54	Prohibits legislative influence in hearings
Sections 55 –64	Conforming technical amendments
Section 65	Prohibits undue agency influence
Section 66	Prohibits cross-jurisdictional involvements
Sections 67 – 70	Conforming technical amendments
Section 71	Brings certain sections of DEC into Central Panel after 2 years
Sections 72 – 83	Conforming technical amendments to affected statutes.
Sections 84 – 89	Applicability, regulatory authority, transition authority and timing to accommodate changes in administrative process.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSSB 203 (JUD)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title Office of Administrative Hearings RDU Occupational Licensing (117)
 Component Occupational Licensing
 Sponsor Rules by Request
 Requester Senate Finance Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1156 - Receipt Supported Services						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 153.9
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	-2					
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSSB 203 (JUD) establishes an Office of Administrative Hearings in the Department of Administration. Under the new Office of Administrative Hearings, the Division of Occupational Licensing would transfer its current Hearing Examiner (PCN 08-1040) and Law Office Assistant (PCN 08-1038) to the Department of Administration, included in the FY05 budget request.

The fund source for these positions are receipt supported services (RSS) from licensing fees. When the positions are transferred to the new office on or after January 1, 2005, it is anticipated that receipts from licensing fees (RSS) totaling \$77.0 (half of the total annual amount) will be transmitted via Inter-Agency Receipts to support the hearing services requested by Occupational Licensing.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144
 Division Occupational Licensing Date/Time 3/1/04 4:08 PM
 Approved by: Edgar Blatchford, Commissioner Date 3/1/2004
 Agency Department of Community and Economic Development

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSB 203
(S) Publish Date: 5/7/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title: "An Act relating to certain administrative hearings..." BRU: Administrative Hearings
Component: Administrative Hearings
Sponsor: Rules
Requester: State Affairs Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	686.6	686.6	686.6	686.6	686.6	686.6
Travel	15.0	15.0	15.0	15.0	15.0	15.0
Contractual	35.0	35.0	35.0	35.0	35.0	35.0
Supplies	6.0	3.0	3.0	3.0	3.0	3.0
Equipment	4.0	0.0	0.0	0.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	746.6	739.6	739.6	739.6	739.6	739.6

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1040 Real Estate Surety	12.1	12.1	12.1	12.1	12.1	12.1
1156 Rcpt. Sup. Svcs.	142.0	142.0	142.0	142.0	142.0	142.0
1004 GF	258.4	251.4	251.4	251.4	251.4	251.4
1007 Interagency Receipts	167.9	167.9	167.9	167.9	167.9	167.9
1133 Indirect Cost Reimb.	166.2	166.2	166.2	166.2	166.2	166.2
Other (Specify Type--Do not abbreviate)						
TOTAL	746.6	739.6	739.6	739.6	739.6	739.6

Estimate of any current year (FY2003) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time	8	8	8	8	8	8
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)
SB 203 establishes the Office of Administrative Hearings (OAH) in the Department of Administration. The OAH will conduct administrative hearings under the direction of the Chief Administrative Hearing Officer.

This fiscal note includes personal services and associated costs for the new Chief Administrative Hearing Officer position as well as five additional hearing officer positions and two support staff positions which will be transferred from the Departments of Revenue, Community and Economic Development, and Administration.

Although precise numbers are as yet unknown, budget savings are expected to result from the creation of the OAH. The new office will be able to conduct hearings that otherwise would have been contracted out. Economies of scale may produce additional savings.

Prepared by: Kevin Jardell, Assistant Commissioner Phone: _____
Division: Commissioner's Office Date/Time: 5/6/03 2:48 PM
Approved by: Mike Miller, Commissioner Date: 5/6/2003
Agency: Department of Administration